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BEFORE
ELLIOTT H. GOLDSTEIN
INTEREST ARBITRATOR

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

POLICEMEN'S BENEVOLENT AND PROTECTIVE ASSN., UNIT 5
("PBPA" or "Union")

AND

CITY OF ELGIN, ILLINOIS
("City" or "Employer")

Arb. Case No. 00/058

OPINION AND AWARD

BEFORE
ELLIOTT H. GOLDSTEIN
INTEREST ARBITRATOR

In the Matter of Interest Arbitration

BETWEEN

POLICEMEN'S BENEVOLENT AND PROTECTIVE ASSN., UNIT 54
("PBPA" or "Union")

AND

CITY OF ELGIN, ILLINOIS
("City" or "Employer")

Arb. Case No. 00/058

Interest Arbitration on one unresolved economic issue (wages) and three unresolved non-economic issues (arbitration of discipline, residency and permanent shift assignments).

OPINION AND AWARD

Appearances:

On Behalf of the City:

R. Theodore Clark, Jr.

On Behalf of the Union:

Sean M. Smoot

Place of Hearing: Elgin Community College, Elgin, IL

Dates of Hearing: May 8-10, July 31, and August 1-2, 2001

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I. INTRODUCTION

This proceeding arises under Section 14 of the Illinois Public Labor Relations Act (IPLRA), as amended by the parties' Alternative Impasse Resolution Procedure that is attached as Appendix B to the most recent Collective Bargaining Agreement between the parties (Jt. Ex. 1), to resolve one economic and three non-economic issues between the parties. The undersigned Arbitrator was duly appointed to serve as the arbitrator to hear and decide the issues presented to him. Hearings were held at Elgin Community College, Elgin, Illinois, on May 8-10, July 31, and August 1-2, 2001, commencing at 9:30 a.m. At these hearings, the parties were afforded full opportunity to present evidence and argument as desired, including an examination and cross-examination of witnesses. A 1113-page stenographic transcript of the hearings was made. Both parties filed post-hearing briefs, the second of which (the Union's) was received on October 5, 2001.

The parties stipulated that the Arbitrator must base his findings and decision upon the criteria set forth in Section 14(h) of the IPLRA, 5 ILCS 315/14(h), and the rules and regulations promulgated thereunder, as these provisions may have been amended by the parties' Alternative Impasse Resolution Procedure.

The parties also granted an extension of time for the issuance of the following Opinion and Award, due to the Arbitrator's illness, as per my specific request.

II. BACKGROUND

The bargaining unit involved in the instant numbers 130 sworn officers, consisting of 13 senior patrol officers[1] and 117 police officers. As of May 1, 2001, a total of 38 members of the bargaining unit were in salary steps below the top step, thereby meaning that all 38 will be eligible for one or more step increases during the four year term of the parties' new collective bargaining agreement (City Ex. 7). This will be in addition to the across-the-board salary increases that result from this interest arbitration proceeding, the City suggests.

Elgin is a community with an increasingly diverse population. Thus, census data shows the following changes between 1980 and 2000 (City Ex. 76):

ITEM	1980	2000
Population	63,668	94,487
Percent White	87.6%	70.5%
Percent Black or African-American	6.6%	6.8%
Percent Hispanic or Latino	10.1%	34.3%

Elgin is also expanding geographically, the evidence shows. Because of annexations, the total square miles within the City's corporate boundaries has increased from 23.18 in 1990 to 25.13 in 2000 (City Exs. 71-72). And significant further expansions is in the works, both currently and over the next decade or two. The

[1] The pay scale for bargaining members who are senior patrol officers is 4% higher than the pay scale for police officers (Jt. Ex. 1).

City's expansion to the west, according to the testimony of Mayor Edward Schock, "will represent probably the largest expansion in the City's history." The planned and anticipated expansion of the City's boundaries will increase the City's boundaries by a third to a half, Mayor Schock also testified.

It was the cumulative effect of the City's witnesses that, given the expansion of the City's boundaries, Elgin is able to offer a wide variety of housing. As Mayor Schock specifically observed, "Elgin has an abundance of affordable housing, more affordable housing than any other community in the northeast suburbs."

Similarly, Councilman Stuart Wasilowski commented that Elgin's wide variety of housing "is what makes Elgin an extraordinary place." Moreover, Elgin has a wide array of amenities in terms of shops, stores, malls, restaurants, professional services, etc., something that has been expanding over the past 10 years and is continuing to expand, according to the Management's witnesses. The public schools are good and produce a good product in educating children, the Employer also argues.

While the City is not making a pure inability to pay defense in this case, it should be noted that it is the position of this Employer that it does not fare nearly as well as many of the eight jurisdictions that it considers comparable to it on several pertinent indicia of comparability. Thus, in terms of its per capita assessed valuation of $12,250, five of the comparable jurisdictions have a higher per capita assessed valuation

(Arlington Heights, Des Plaines, Evanston, Oak Park and Skokie) (City Ex. 2).

Additionally, six of the comparable jurisdictions have a higher per capita sales tax revenue (Arlington Heights, Des Plaines, Evanston, Joliet, Skokie, and Waukegan) (City Ex. 2). Nor does Elgin fare any better when it comes to median family income and median home value vis-a-vis the eight comparable jurisdictions. Elgin, with an average family income of $57,974, ranks fifth out of the nine municipalities in the comparability pool (City Ex. 3). With a median home value of $136,900, Elgin likewise ranks fifth out of the total of nine comparable communities (City Ex. 3). The City believes that these rankings are relevant in terms of where Elgin stands vis-a-vis its eight comparables with respect to the salary issue and adds considerable support to the conclusion that the City's final offer on salary is the most reasonable, I note.

Elgin is fortunate in one respect in that it has a river boat casino that provides the City with significant revenues, I further note. These revenues are "segregated" however, and are used primarily for "capital projects and specifically not used for day-to-day operational funds, including salaries," the record discloses. As Mayor Schock testified, the policy of not using casino funds "at all" for the City's operating budget is widely supported in the community and "has been supported by the City Council without a single dissenting vote since the river boat was first here."

Mayor Schock also noted that this City policy is "widely supported by Moody's when they review our bond rating annually," I also note. While river boat funds have not been used for operating expenses such as salaries, police officers have benefitted, at least indirectly, from the use of such funds for capital projects, such as the $14 million spent for the new police station and the $6 million spent for a new communications system, the Employer also argues. The Union emphasizes, however, that there are no legal or "policy" impediments to the use of the river boat casino revenues for City employee salaries, other than choice.

III. COMPARABLE JURISDICTIONS

A. The City's Comparable Jurisdictions

The City believes that there are eight comparable jurisdictions that historically been used in both police and fire negotiations involving Elgin. Moreover, the City asserts that its police and fire collective bargaining units have a relatively long history, extending back to at least the early 1970s. In terms of those negotiations, the City's attorney who has represented the City since at least the mid-1970s, testified that during that entire period of time, " ... the same eight external jurisdictions have been used for external comparability purposes." The eight jurisdictions are Arlington Heights, Aurora, Des Plaines, Evanston, Joliet, Oak Park, Skokie and Waukegan.

Also significant to the City is the fact that in the three prior interest arbitration proceedings under Section 14 of the IPLRA, the same grouping of eight communities has been used for

external comparability purposes. Because of this long history of using those eight jurisdictions for comparability purposes, a fact which the Employer argues the Union did not contradict during these lengthy proceedings, I, as Arbitrator, should accept the historical comparables used over the years, the City also stresses.

Perhaps most important, the City also asserts that the eight historical comparables were used both by Union and Management representatives in the negotiations which led ultimately to this specific arbitration proceeding. The City thus argues that the Union has in fact agreed to the eight comparable jurisdictions above-noted by using only those municipalities as "its comparables" in these negotiations. However, at the beginning of this arbitration, the Union then suddenly began to use the City of Naperville as an additional or ninth comparable jurisdiction. The City is quick to point out that the Union in its opening statement promised to "provide testimony as to why Naperville has been included," but the Union in fact presented no such testimony, the City maintains.

Accordingly, as the City sees it, the Union in fact is attempting to "cherry-pick" in selecting its additional proposed comparable solely in order to find an additional jurisdiction that would support its position on most of the issues in dispute. Arbitrators have commonly rejected such attempts to skew comparability by the obvious device of adding extra jurisdictions to the list of comparables which the parties have consistently used over the years. I should do likewise, the City reasons.

Additionally, since this Employer negotiates both with a police and a firefighter bargaining unit, and the same group of external comparables have been used in negotiations with both groups, stability makes it strongly advisable to maintain the same group of comparables, unless very significant proofs are offered as to why a new comparable jurisdiction should be added to the mix, the Employer further argues. There is no evidence that would support such an addition to the list of comparables, the Employer directly urges.

B. **The Union's Comparable Jurisdictions**

The Union accepts the set of comparables historically used by these parties as all being appropriate for the "comparability pool." However, in addition to these agreed-upon comparable communities, the Union also proposes to include the City of Naperville. The Union supports this addition by contending that the population of Naperville is 128,358, which is well within the range of the agreed-upon comparable communities, it points out.

For example, says the Union, the population of the City of Aurora is 142,990, which is the highest population among the current comparables. The population in Oak Park is 52,524, which is the lowest population among the current comparables. The Employer, the City of Elgin, has a population which rides the middle of these comparable communities, at 94,487, the Union notes. It is thus clear to the Union that, on the basis of population, the City of Naperville is well within the population range of the historical comparable communities.

The PBPA also offers data in support of its view that the City of Naperville should be considered a comparable jurisdiction to Elgin. The total Property Tax Extension (EXT) of Naperville is $22,544,253. The total EXT in the City of Aurora is $24,465,457, the highest total EXT historical comparable. The total EXT in Joliet is $12,920,029, which is the lowest total EXT. This Employer, the City of Elgin, has a total EXT of $20,354,671. Thus, the Union argues that Naperville's total EXT is well within the range of the historical communities.

Finally, the Union notes that Naperville is located in the Chicago Metropolitan area less than a 20 minute drive from the City of Elgin. Historical comparables such as Aurora, Oak Park, Evanston and Waukegan are approximately the same distance from Elgin if driving time is the measure, the PBPA maintains.

Moreover, because of Elgin's location, near the Elgin-O'Hare Expressway and the Northwest Tollway, there can be no doubt that Elgin draws from the same labor pool are the City of Naperville, given the ease of connection between the Northeast and Southwest Development Corridors, the Union asserts.

c. Discussion and Analysis of the Comparability Pool

Given the long history of using the same eight jurisdictions for comparability purposes, a fact which the PBPA conceded, as above-noted, and also given the fact that these historical comparables were used in both police and fire negotiation and served as a basis for evaluation of the respective claims of both the police and fire units in preceding interest arbitrations, I am

persuaded that only the strongest evidence of a need to modify or add to this comparability pool should lead me to accept the Union's demand for the inclusion of the City of Naperville as a comparable jurisdiction to this Employer. As Management emphasized, stability is a valid concern in any consideration of what properly constitutes an appropriate comparability pool.

As Arbitrator Neil Gundermann reasoned in Village of Skokie and Skokie Firefighters, Local 3033, decided on July 6, 1993:

> Bargaining history establishes that the parties have reached an agreement as to what constitutes comparable communities in the negotiation of three prior agreements and in an interest arbitration. Comparables are not etched in stone; they can be changed when there is a valid reason for doing so. However, an integral part of bargaining is the establishment of comparables. If after bargaining the issue of comparables the parties reach an impasse, it may be necessary for the arbitrator to determine comparables. However, the arbitrator should not disturb the comparables used by the parties until they have bargained and reached an impasse on the subject. In this case there appears to have been no bargaining over the comparables. According to the testimony, during the bargaining which led up to the arbitration the Union presented the Village data based on the previously established comparables.
>
> The Union raises a number of arguments in support of its proposed comparables. However, where there was not significant bargaining over the issue of comparables, the undersigned is reluctant to change in this proceedings the comparables the parties have traditionally relied upon in both bargaining and the previous interest arbitration.

I completely agree with Arbitrator Gundermann's reasoning as quoted immediately above. Although there is perhaps more geographic separation between Elgin and Naperville than exists

between Elgin and most of the current comparable jurisdictions, this geographic distance may be probably shrinking almost everyday, and as the commercial and industrial development along both the Northwest and Southwest Corridors moves forward. Certainly, the distance by car between the two cities is no more than between Elgin and Evanston, given the lack of a direct expressway to connect those two municipalities, I note. That is not sufficient or overwhelming proof Naperville should be added to the comparability pool, however, no more than it would favor Bolingbrook, Vernon Hills, or Highland Park, I find.

The other factors, such as population and EXT used as comparison points by the PBPA, also reveal that there is some logic to the claim of basic comparability between the two cities. One can readily see the basis to the Union's arguments here, I acknowledge. However, the commonalities do not outweigh the bargaining history summarized above; the use of the historical comparables in both police and fire negotiations with this Employer over the years; the findings in three prior interest arbitrations that the eight comparable jurisdictions contended for by the Employer currently in fact were then appropriate, and especially the precedent decision between the City of Elgin and the prior police union which represented this police unit before the PBPA (City of Elgin and Metropolitan Police Association, Unit 54, decided by Arbitrator Steven Briggs on February 8, 1995, at p. 6), which squarely found that the current eight city pool "would be a reasonable approximation of what the parties might have done in the

present case had it not been advanced to interest arbitration..." Most important, the Union's negotiators used the eight historical comparables, in addition to Elgin, as the basis for its comparisons in bargaining in the negotiations leading to these current proceedings. There seems no convincing need to break from precedent to add Naperville under these circumstances, I am therefore convinced.

The need for stability and this considerable history make me extremely reluctant to change the comparables previously used by these parties, I emphasize. The fact that the firefighter bargaining unit also bargained with this Employer in 1999 and made use of the same group of external comparables is also extremely significant to my coming to the conclusion Naperville should not be added now. While I am not sure the Union is really engaged in "cherry-picking," I also find, in the final analysis, that the comparables that have been historically used by these parties in the past should likewise be used in the instant case, and I so find.

In sum, Arlington Heights, Aurora, Des Plaines, Evanston, Joliet, Oak Park, Skokie and Waukegan are found by me to be the comparable jurisdictions available for use for purposes of this arbitration. In addition, all other City bargaining units are valid for making comparisons on the basis of internal comparability, I also rule. See my decision In the Matter of the Interest Arbitration Between the City of Cleveland, Ohio and

Cleveland Police Patrolmen's Association, SERB Case No. 98-MED-01-0039, decided on March 12, 1999, at pp. 33-40.

IV. ECONOMIC ISSUE--SALARIES FOR THE 2000, 2001 AND 2002 FISCAL YEARS.

A. The Parties' Final Offers

1. The City's Final Offer

The City's final offer on salaries for the 2000, 2001 and 2002 fiscal years is as follows (Jt. Ex. 3B):

> Section a. Salary Range. The beginning Police Patrol Officer shall start a step one of the salary range set forth below. Upon attainment of satisfactory performance evaluation after six (6) months of employment, he/she shall advance to step two (2) of the Police Patrol Officers' salary range and shall, following attainment of satisfactory performance evaluation, advance to further steps in said salary range at twelve (12) month intervals thereafter until reaching the range maximum.
>
> Any Police Patrol Officer receiving an unsatisfactory performance evaluation required for the above advancements shall be reviewed again within ninety (90) days of the unsatisfactory evaluation. Step increases covered in this provision may not be withheld for a period longer than ninety (90) days from the date of the officer's original unsatisfactory evaluation. If an officer believes that he/she has been unreasonably denied a step advancement based on an unsatisfactory evaluation, he/she may file a grievance in accordance with the provisions of Item 14 of this Agreement.
>
> Effective the January 1, 2000, the base monthly and yearly salary ranges for employees covered by this Agreement shall be:

I	II	III	IV	V	VI
3281	3486	3836	4057	4270	4513
39372	41832	46032	48684	51240	54156

> Effective the January 1, 2001, the base monthly and yearly salary ranges for employees covered by this Agreement shall be:

I	II	III	IV	V	VI
3396	3608	3970	4199	4419	4671
40752	43296	47640	50388	53028	56052

> Effective the January 1, 2002, the base monthly and yearly salary ranges for employees covered by this Agreement shall be:

I	II	III	IV	V	VI
3515	3734	4109	4346	4574	4834
42180	44808	49308	52152	54888	58008

> Effective the January 1, 2003, the base monthly and yearly salary ranges for employees covered by this Agreement shall be:
>
> The City proposes a wage reopener.
>
> The foregoing salary increases are in addition to all in-range step increases to which employees may be eligible for their anniversary dates during the term of this Agreement.
>
> Any Police Officer designated at the discretion of the Police Chief as a Senior Police Officer shall be paid no less than an additional four percent (4%) above his/her step on the monthly salary schedule for the period of time so designated. Any such discretionary designation shall be made from each shift after shift assignments are completed each year and a shift roster established. Designation shall be based on two criteria: interest and rating of average or above in the most recent evaluation.
>
> Any Police Officer designated at the discretion of the police Chief as a Police Administrative Officer shall be paid an additional two percent (2%) above his/her step on the monthly salary schedule for the period of time so designated.

2. **The Union's Final Offer**

The Union's final offer on salaries for the 2000, 2001 and 2002 fiscal years is as follows (Jt. Ex. 3A):

Item 4. Wages

Section a. Salary Range. The beginning Police Patrol Officer shall start at step one of the salary range set forth below. Upon attainment of satisfactory performance evaluation after six (6) months of employment, he/she shall advance to step two (2) of the Police Patrol Officers' further steps in said salary range at twelve (12) month intervals hereafter until reaching ~~the range maximum.~~ Step 6. Officers who have completed ten (10) years of service shall advance to step seven (7).

Any Police Patrol Officer receiving an unsatisfactory performance evaluation required for the above advancements shall be reviewed again within ninety (90) days of the unsatisfactory evaluation. Step increases covered in this provision may not be withheld for a period longer than ninety (90) days from the date of the officer's original unsatisfactory evaluation. If an officer believes that he/she has been unreasonably denied a step advancement based on an unsatisfactory evaluation, he/she may file a grievance in accordance with the provisions of Item 14 of this Agreement.

Effective January 1, 2000, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3281	3486	3836	4057	4270	4513	4694
39372	41832	46032	48684	51240	54156	56328

Effective July 1, 2000, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3306	3512	3865	4087	4302	4547	4729
39672	42144	46380	49044	51624	54564	56748

Effective January 1, 2001, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3422	3635	4000	4230	4453	4706	4895
41064	43620	48000	50760	53436	56472	58740

Effective July 1, 2001, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3448	3662	4030	4262	4486	4741	4932
41376	43944	48360	51144	53832	56892	59184

Effective January 1, 2002, the base range for employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3569	3790	4171	4411	4643	4907	5104
42828	45480	50052	52932	55716	58884	61248

Effective July 1, 2002, the base range for employees covered by this Agreement shall be:

I	II	III	IV	V	VI	VII
3686	3818	4202	4444	4678	4944	5142
44232	45816	50424	53328	56136	59328	61704

Effective January 1, 2003, the base range of employees covered by this Agreement shall be:

The Union Proposes a Wage Reopener

The foregoing salary increases are in addition to all in-range increases to which employees may be eligible for on their anniversary dates during the term of this Agreement.

Any Police Officer designated at the discretion of the Police Chief as a Senior Police Officer shall be paid no less than an additional four percent (4%) above his/her step on the monthly salary schedule for the period of time so designated. Any such discretional designation shall be made from each shift after shift selections are completed each year and a shift roster established. Designation shall be based on two criteria: interest and rating of average or above in the most recent evaluation.

Any Police Officer designated at the discretion of the Police Chief as a Police Administrative Officer shall be paid an additional two percent (2%) above his/her step on the monthly salary schedule for the period of time so designated.

B. A Summary of the City's Arguments as to Why the Arbitrator Should Accept Its Final Offer on Salaries

1. Internal Comparability Considerations

The City's final offer as to wages is an across-the-board salary increase of 3.5% effective January 1, 2000; 3.5% effective January 1, 2001; and 3.5% effective January 1, 2002. The City argues that this final offer on salary precisely tracks the terms of the City's negotiated collective bargaining agreement with the International Association of Firefighters, Local No. 439, for the three years in question (City Ex. 4).

Additionally, the City suggests that if proper consideration is given to the importance of the internal relationship of salary increases between police officers on the one hand and firefighters on the other in Elgin, the historical pattern of parity in the wage increases granted the two groups of employees is the strongest possible consideration for a finding that the City's final offer is more reasonable than the Union's.

In sharp contrast to the City's parity offer, it stresses, the Union's final salary provides for a new 4% longevity step at 10 years of service, plus the following across-the-board salary increases (Jt. Ex. 3A):

- Effective January 1, 2000 - 3.5%
- Effective July 1, 2000 - 0.75%
- Effective January 1, 2001 - 3.5%
- Effective July 1, 2001 - 0.75%
- Effective January 1, 2002 - 3.5%
- Effective July 1, 2002 - 0.75%

Conservatively estimated, the Union's final salary offer over the three calendar years in question would cost $516,935 more than the City's final salary offer (City Ex. 18). As the City's attorney stated at the hearing, "What the Union has incorporated in its final offer on wages would smash parity to smithereens."

Management notes that there is a well-established parity relationship between police officers and firefighters in Elgin. It suggests that this pattern of bargaining has developed over at least the last 14 years, and that the parity relationship has served this Employer and its two public safety unions very well during that time. In this regard, according to Management, City Ex. 26 discloses that the across-the-board salary increases for police and fire for 13 of the past 14 fiscal years have been exactly the same.

The only exception was in 1992, when the police bargaining unit received an across-the-board salary increase (5.5%) that was

a quarter of one percent, i.e., 0.25%, more than the salary increase by the firefighter bargaining unit. If the Union were to argue that this single deviation from parity somehow could be considered to have broken the pattern of parity between the two public safety employee groupings in Elgin, it would be asking the Arbitrator to disregard the fact that in 1992, when that minor difference in the wage increases between police and fire occurred, Arbitrator George Fleischli decided in an interest arbitration between the Employer and the Firefighters, that any final offer wage proposal by either group to this Employer must give great weight to the established pattern of parity.

In his 1992 award (Appendix 2 to the Employer's brief, at pp. 15-16), Arbitrator Fleischli stated he "was reluctant to give serious consideration to the [firefighter] Union's final offer on wages, because of the potential disruptive impact it will have on future bargaining in the City, unless the record demonstrates that the Union's approach is necessary to deal with existing wage inequities," the City stresses.

Despite the minor deviation from absolute parity presented in 1992 in the negotiated police contract, Arbitrator Fleischli thus accepted the City's final offer on salaries for fire, which he noted was "nearly identical to those granted police under the voluntary agreement reached with its representative ... " (City's brief, Appendix 2, at p. 5).

No other deviations in parity have resulted from either the negotiations of the parties or the two other interest arbitrations held since 1992, according to the City's argument.

The City further relies on the analyses of several interest arbitrators, including myself, that where an historic parity relationship in terms of percentage increases, not in terms of the actual salaries paid, exist between police and fire salaries in a municipality, such a relationship should be rarely disturbed, because of the potential for "wreaking havoc" to the reciprocal bargaining relationships developed over time. These arbitrators consistently stressed that since interest arbitration awards should approximate the outcome of free bargaining, in situations where each and every negotiated salary increase for the Elgin police and fire units have been the same for at least 14 years, compelling reasons must be established by a union demanding a break from the pattern to show why such a deviation is reasonable and required. That logic applies with equal force here, I am told.

2. <u>External Comparability Data</u>

The City argues that a good starting point to judge what is reasonable in terms of comparability data is what the parties themselves believe was reasonable and appropriate in prior negotiations. Thus, Management maintains that, in this case, it is appropriate to consider as an appropriate benchmark for external comparability comparisons in this proceeding where the Employer stood in terms of salaries as of the first year of the parties' 1996-99 Collective Bargaining Agreement. The City asserts that the

evidence of record is quite clear that, as of January 1, 1997, the negotiated Elgin top step salary for police officers was $48,372, which ranked third of the nine comparable communities, including Elgin, as of January 1, 1997 (City Ex. 32).

Continuing its analysis, the City points out that based on its final salary offer, as of January 1, 2000, Elgin's top salary step of $54,156 will rank fourth out of the nine comparables. Moreover, Elgin will maintain its rank of fourth as of January 1, 2001, as well, the City avers (City Ex. 34). This comparison is strong counter evidence to the Union's claim of a compelling reason to break the historical internal parity pattern, as explained earlier, the City submits.

Although acknowledging that Elgin's rank will slip from third to fourth, the City is quick to point out that as of January 1, 1997, its primary comparison point, Elgin was third by the slimmest of margins -- $110 -- and that as of January 1, 2000, it will be only $731 from the third slop. This causes the City to argue that, from its analysis of the external comparability data just presented, the Elgin police officers "will not be materially affected if the City's final salary offer is accepted as regards the external comparability factor." When considered in conjunction with the historical parity among fire and police as internal comparables with regard to percentage salary increases, there certainly is no overwhelming justifications that can be drawn from

a consideration of external comparability, based on the "pure" percentage salary increases, whether the extra increase are called "equity adjustments" or just extra pay raises, plain and simple, Management submits.

More significant, the Employer suggests that the inclusion by the Union of a new or seventh step, whether called that or denominated a 4% longevity pay increase after 10 years, as the Union seeks to do here, constitute a demand for a substantial breakthrough in the previously negotiated salary format. According to Management, even a cursory analysis of the Union's final salary offer shows that the 4% longevity step after 10 years for all bargaining unit employees would substantially increase the final salary package cost to the City. Moreover, if considered as longevity pay, this basic change would result in a significantly greater longevity benefit than all the external comparables, the Employer asserts. Both these facts strongly militate against the Union's final offer on salary, the Employer urges.

In short, the shear excessiveness of the Union's final offer on longevity pay is demonstrated by the maximum amount of longevity pay that police officers for the comparable jurisdictions can receive. The following chart, based on the data in City Ex. 52 highlights this point to Management, as follows:

JURISDICTION	MAXIMUM LONGEVITY PAY AS OF 1/1/01	NUMBER OF YEARS NEEDED TO BE ELIGIBLE
Arlington Hts.	$1,050	20 years
Des Plaines	$2,458	20 years
ELGIN	**$2,268 (based on Union's final salary offer)**	**10 years**
Evanston	$2,650[2]	20 years
Joliet	$2,807, but only if hired prior to 6/30/87; $1,897 if hired after 6/30/87	25 years if hired prior to 6/30/87; 20 years if hired after 7/1/87
Oak Park	$1,080, but only if hired prior to 7/11/97	15 years
Skokie	$1,600	25 years
AVERAGE EXCLUDING ELGIN	**$1,941**	**20.8 years**

The foregoing chart indicates to the Employer that, under the Union's final offer, Elgin police officers after only 10 years of service would be receiving maximum longevity pay of $2,268, or $327 more than the average of $1,941 for the other six jurisdictions which, on average, the Employer emphasizes, require 20.8 years of service to receive. Since all police officers in Elgin would receive the 4% increase as longevity pay after 10 years, the magnitude of the Union's demand on this point should be obvious because the longevity step comes into effect in less than half the

[2] Evanston pays 5% longevity pay at 20 years; Evanston's longevity pay was computed on the basis of Evanston's top step salary of $53,007 as of January 1, 2001.

time as the average longevity pay for Elgin's comparables. If there was any doubt as to the unreasonableness of the Union's final salary offer, the Employer reasons, it is completely removed by this comparative data on longevity pay.

The City also argues that total compensation should be taken into account in the consideration of the overall reasonableness of the City's and Union's final offers. Among the statutory criteria on which an interest arbitrator is required to base his or her finding and opinion is Section 14(6), 5 ILCS 315/14(h)(6). This section spells out that it is overall compensation, including not only direct wage compensation but all the other monetary benefits set forth by the statute, including insurance and pensions, vacations, holidays, and "all other benefits received."

Thus, to Management, in addition to base salary, some of the major benefits that must be considered in total overall compensation that employees may be eligible to receive are longevity pay, holiday pay, and group hospitalization and major medical insurance. On this score, argues the City, if comparisons are made between police officers with 15 years of service working in Elgin and for the eight comparable jurisdictions as of January 1, 2001, the total compensation package comparison results that Elgin is second only to Joliet among the comparability pool. Perhaps more significant, Management asserts, the <u>average</u> total compensation set forth on City Ex. 53 for the eight comparables, excluding Elgin, is only $57,031. Elgin's total compensation package for a police officer with 15 years of service, based on the

top step salary, is $58,653. This comparison shows that, for total compensation at the 15 years of service level, Elgin is 2.84% higher than the average ($1,622). This total compensation data supports the reasonableness of the City's final offer on salaries, the Employer further contends.

Based on the foregoing, the current last and best City offer is more reasonable, and should be adopted by the interest arbitrator, the City concludes.

C. A Summary of the Union's Arguments as to Why the Arbitrator Should Accept its Final Offer on Salaries

1. Internal Comparability Considerations

The Union accepts the City's offer of an across-the-board salary increase of 3.5% effective January 1, 2000; 3.5% effective January 1, 2001; and 3.5% effective January 1, 2002 for all members of this bargaining unit. In addition, the Union proposes to add an equity adjustment to all steps on the wage schedule of 0.75%, to be implemented on July 1, 2000, July 1, 2001, and July 1, 2002.

As a separate issue, it is the proposal of the Union for the creation of an additional step on the wage schedule referred to as Step Seven (7) that would be 4% more than the current Step Six (6), plus any additional equity adjustments awarded by the Arbitrator. This seventh step, according to the Union's final offer, would be available to all officers who have completed ten years of service under the same conditions that currently exist for advancement through the currently existing salary format, Step One (1) through Six (6) under Item 4, Section (a) of the parties' Collective Bargaining Agreement (Jt. Ex. 1).

The PBPA suggests that its two salary proposals are separate and distinct, with the first involving wages and the second the salary format. It also acknowledges that the two offers, taken together, are required because of the slippage of wages and salary of Elgin's police officers when compared with the nine comparable jurisdictions (including the City of Naperville) which the Union has used as its comparison pool. The PBPA suggests, however, that its proposals do not destroy the claimed parity with Elgin's firefighters or any historical pattern of bargaining. Simply put, there have been deviations or discrepancies where equity and justice require such, based on external comparability and the other statutory factors under Section 14(h) of IPLRA, 5 ILCS 315/14(h).

According to the Union, it refuses to accept a general wage increase which was in fact established at bargaining tables at which its members were not represented. Such acceptance of a wage increase which is not of their making is repugnant to the police officers who are members of this bargaining unit, the PBPA directly asserts.

The Union also strongly believes that the City's patrol officers are highly skilled, face the most physical danger, including threats of assault and murder, and have the most stringent regulations concerning behaviors at work or otherwise. In terms of both responsibility and culpability, argues the PBPA, patrol officers are considered to be "on duty" 24 hours per day. However, unlike firefighters, Elgin's police do not work on a 24

hours on, 48 hours off, schedule. To directly compare the two employee groupings is simply unfair to both, the Union submits.

The Union also specifically argues that the requested equity adjustments of 0.75% to be added to all steps in the salary schedule effective July 1, 2000; July 1, 2001; and July 1, 2002, are justified for several reasons. First, although the Union does not dispute that the general across-the-board wage increases for police and fire in this City have been uniform in the past, the PBPA also asserts that this arrangement not has resulted in a major wage disparity between Elgin police officers and their counterparts in comparable communities. According to the testimony of the Union's chief spokesperson, Eric Poertner, officers working in Elgin have seen their comparative position among the ten comparable communities rapidly decline. According to Poertner, during the course of this contract, police officers who have concluded five years of service rank fifth in the comparability pool prior to the expiration of the predecessor contract. However, officers with 10 years of service and beyond rank dead last among the comparability pool (Un. Exs. 16-17).

Thus, the two economic proposals set forth above frankly seek to avoid the City's obvious long-term objective to maintain parity between firefighters and police working for the City of Elgin. Not only are firefighters and police jobs not comparable, and that is true even more in 2002 than it was in the 1980s through 1992 when parity came to be, proofs demonstrate that the exact same general wage increases have not worked as anticipated when originally

imposed or agreed to, the Union suggests. For example, Arbitrator Fleischli's 1997 interest arbitration award between the Employer and the International Association of Firefighters, Local 439, discloses that the firefighters unit has moved up or stayed the same among the eight comparable jurisdictions (City Ex. 25).

The proofs presented in great detail on this record, however, demonstrate that while the firefighters have maintained their relative position, the City's police officers have substantially moved down among the comparables. Thus, this "parity" has created equity problems for the Union and the police officers of Elgin. The overwhelming need for a breakthrough or change from parity has been proven, based on any fair assessment of the facts of record, the Union submits.

2. External Comparability Data

As mentioned above, Union Exs. 16 and 17 disclose that there has been a substantial downward movement for police officers working for the City of Elgin as compared to police officers in the comparable jurisdictions, the Union argues. It is clear that police officers rank dead last among the comparables when actual wages paid per year are evaluated. When looking at the demographic and economic data provided by both parties on this record regarding the historical comparables, however, it is clear that the City of Elgin does not rank dead last in any category except police wages, the PBPA emphasizes. For example, Elgin ranks fourth in population; fifth in total Equalized Assessed Evaluation (EAV) (Un.

Ex. 8); fifth in Property Tax Extension (Un. Ex. 9); and sixth in Sales Tax Receipts (Un. Ex. 10).

This Employer is also one of only three communities in the comparability pool that has the luxury of gaming revenues. In fact, according to the Union, Elgin ranks number one as to tax revenues derived from gaming in the State of Illinois. There is really no reason this revenue stream should not be considered to be "a City asset," the Union avers.

Consequently, the Union emphasizes that the statutory criterion of external comparability strongly favors its position that some compensation that is "extra" is mandated during this current negotiation. The Union directly argues that the claim of an historical pattern of "parity" is simply not sufficient to justify the City's final offer on wages, when external comparability is evaluated and the slippage in Elgin's position in the overall group is considered. "Catch-up" is needed, it thus asserts.

Turning to the particular arguments concerning external comparability, the Union points out that under any fair head-to-head comparison, patrol officers working in the City of Elgin rank "dead last" if those officers having completed ten or more years of service are the point of comparison. Moreover, the Employer, specifically the Mayor and City Council, do recognize the appropriateness of considering external comparables when deciding on wage increases for its City Manager and the other executive positions, the Union stresses. Increases to those individuals are

not limited or encumbered by the percentage increase proposed and given to other City employees or groups of City employees, the PBPA directly notes. Only unionized employers are segregated into "parity" groups internally, the Union submits.

The Union at the arbitration proceedings also suggested that Elgin is a major transportation and business center in the State of Illinois. Moreover, the City's current economic condition has significantly imposed from the 1980s, when economic stagnation was feared. But, the Union maintains, Elgin is now currently expanding and has the economic recourses -- the ability to pay -- the Union's two final wage offers.

Next, the Union focuses its argument regarding the issue of external comparability on a comparison of longevity pay among the comparables. It notes that the City of Elgin is the only jurisdiction among its comparables that does not have any longevity pay whatsoever. It also notes that Elgin patrol officers are significantly below the compensation levels on an increasing scale as seniority and time and service goes up. In other words, the more senior the officer, the lower ranked in comparison with fellow officers working for the comparables, the Union contends. Consequently, longevity pay is sorely needed, the Union concludes.

The Union also stresses that if external comparisons mean anything, they certainly mean that parity must be broken under the current circumstances. As the parties have agreed, there will be a wage reopener in the fourth year of the agreement. This is important, the Union argues, for two reasons.

If external comparability comparisons are not to be considered, and parity for the sake of stability controls, the wage reopener is in fact illusory, I am told. The fourth year of the contract will be decided by whatever is negotiated between the Employer and firefighters, the Union points out. The point of bargaining between this Union and the Employer would thus be destroyed.

Also, in order for the Employer's argument that the general wage increases between the City of Elgin police and fire must always be identical, the Employer should never have offered to agree to a wage reopener for the fourth year in this Collective Bargaining Agreement. It simply should have offered the same general wage increase agreed upon by Local 439 of the IAFF, the Union stresses. It thus asserts that Management's offer of a wage reopener "flies in the face of the Employer's position regarding internal parity." To offer a reopener for wages with the absolute intent on Management's part to maintain parity is essentially a sham, given the fact that the firefighters already would have negotiated their specific wage increase for that particular year, I am reminded.

Additionally, the Union stresses that internal comparability or parity has <u>never</u> been fully applicable in Elgin, since the firefighters received "Kelly days" as effectively additional compensation for that group of employees. Kelly days are, after all, essentially like compensatory time and functionally identical to paid vacation or holidays. They raise the average per hour

earnings of a firefighter, the PBPA claims. Anytime an additional Kelly day is granted fire, additional compensation beyond parity comes along with the granted economic benefit. Perhaps that is why the firefighters have maintained comparability with their counterparts in the eight other municipalities that form the comparison grouping. At any rate, says the PBPA, "knee jerk" parity is more fiction than the fact under these circumstances.

The Union further argues that the precedent arbitration awards submitted into this record either fully support its current proposals or are distinguishable from the issues being litigated in this specific interest proceeding. Since management has never presented or relied upon an inability to pay contention, and the positive financial condition of the City was developed as a matter of record in the current case, there is ample justification for finding, under the statutory criteria noted above, that the Union's offers on wages are much the more reasonable.

In sum, then, this Union claims that pattern bargaining and parity never truly have existed between the Employer and police and fire. External comparables strongly mandate a movement from a pattern of pushing the percentage salary increases into one mould. Internal comparability cannot offset the genuine need for "catch-up" by the police with their external comparables. Moreover, the proffering of a wage reopening for the fourth year by this Employer directly contradicts its reliance on parity as always controlling wages, since that offer effectively would be a sham or nullity, I am told.

For all the foregoing reasons, the proposal as to wages, including the equity adjustments set forth above, and also the provision for Step Seven (7) as a needed longevity pay benefit at the completion of ten years of service for all police officers, as presented by the PBPA as its last best offer should be fully adopted, this Union urges.

D. Discussion and Findings

At the outset, I believe that there are three fundamental considerations that I must bear in mind in dealing with the two substantive issues in dispute as regards the increases in compensation proposed by the Union.

First, a careful reading of the record in this proceeding discloses that on the initial day of hearing, the Union in its opening statement argued that the difference between its specific salary proposal and that of this Employer essentially had two aspects. One was the obvious fact that Management was proposing 3.5% across-the-board increases in salary for bargaining unit members effective on the first day of the fiscal year of this City, which happens in this instance to be the calendar year, so that the three raises would be effective on January 1, 2000 and then January 1 on the next two successive years. Since the Union accepts this proposal, it goes on to suggest that its own proposal with regard to wages essentially should be considered in the guise of "equity adjustments" of 0.75% to be added to all steps in the salary schedule effective July 1, 2000; July 1, 2001; and July 1, 2002.

The Union to at least some degree seems to be arguing that what it has proposed is in fact not really a deviation from parity, if parity really has ever existed, as regards these "equity adjustment wage increases." It suggests both that such equity adjustments have been done in the past (1992 for police when fire did not get a similar equity adjustment) and, consistently, in the case of firefighters when additional compensation through increases in Kelly days occurred outside the pattern of identical, "parity" increases.

Whether one subscribes to Gertrude Stein's statement that, "A rose is a rose is a rose," or to the idea that "If it quacks like a duck, walks like a duck, and looks like a duck, it is probably a duck," as the City argues, I specifically find that what is at issue with the three "equity adjustment increases proposed by the Union" is plainly, in fact, just an additional increase in wages. Thus, as the Union at times admits, this part of its wage proposal would constitute a deviation from the pattern of parity in increases between police and fire in the Elgin bargaining relationships, even if that deviation could not fairly be considered to be a fantastically huge divergence from the pattern, I rule.

Second, the Union has at various times characterized its second economic proposal, that there be created a Step Seven that would be 4% more than the current Step Six which would be available to all police officers upon the completion of ten years of service, as merely adding another step to the pre-existing salary schedule.

Along those lines, the Union argued in its opening statement that the proposal for the addition of a seventh step was actually "a second part to its salary proposal." Although the Employer strenuously contended that what the Union was in fact proposing through that guise was in fact longevity pay, it agreed that the two parts to the Union's proposal really added directly to wages and should be considered as part of one issue. I agree.

To Management, the significance of the "form in which the Union's longevity pay proposal is cast" is that it is a direct change in the format of the salary plan structure itself. And, the Employer emphasizes, several well-respected interest arbitrators have already ruled that that sort of basic structural change to the salary format should come through direct negotiations, and should not be lightly granted in interest arbitration. In this instance, the Employer firmly rejects adding longevity pay to the salary structure in place for police in the City of Elgin.

Based on the parties' stipulations and the manner in which the evidence was presented during these proceedings, however, there is no dispute that the two parts of the Union's proposal for increased compensation, that is, the "equity adjustments" which in fact are additional percentage increases in pay, and the second increase, the adding of a seventh step to the salary format, or the creation of longevity pay, must and should be considered in the aggregate. The two Union issues will be compared by me to the Employer's rejection of longevity pay and its own specific proposals for percentage increases in salary across-the-board for the police

officers in this bargaining unit. These are the salary package issues.

It is also important to note that the Union's total proposals as to wages for the three years would result in a significant cost to the City both in terms of dollars spent and percentage of increases, I am persuaded. As Management stressed, a police officer who had completed ten years of service would receive, on a compounded basis, in the first year of the contract, an increase in wages that would amount to 8.5%. Firefighters with ten years of service under their contract got 3.5%. On a compounded basis over the three years included in the package, again at the ten year step for a police officer in accordance with the Union's proposal, the increase would be 185. On a compounded basis for firefighters at the conclusion of ten years of service, the agreed-upon increase is approximately 11%, as Management has suggested.

Said another way, on a straight percentage basis, without any compounding, the Union's final salary offer over three years at Steps One through Six comes to 12.75% versus the City's final offer of 10.5% (Jt. Ex. 3A; Jt. Ex. 3B). However, as a result of the combination of across-the-board percentage increases at Step One through Six and the addition of the new 4% Step Seven at ten years, the salary for a police officer at Step Six under the prior contract who would be eligible for Step Seven under the Union's final offer would jump from $52,320 to $62,704 as of July 1, 2002, I note.

As the City took great pains to point out, the overall costs of the Union's final offer on salaries versus the City's final offer, conservatively computed, exceeds 1/2 million dollars over calendar years 2000, 2001 and 2002, i.e., $516,935 (City Ex. 18). Since a 1% salary increase based on the current payroll comes to $76,624 (City Ex. 18), the Union's final offer collectively comes to 6.7% more than the City's final salary offer over the three years in question.

As I read this record, then, the magnitude of the Union's final salary offer, consisting as it does of semi-annual across-the-board salary increases totaling 4.25% per year, plus a new Step Seven providing a 4% increase at the completion of ten years of service, also across-the-board, is far beyond the average range of settlements for the historical comparables. It is to be remembered that, as of January 1, 1997, the negotiated Elgin top step salary for police officers was $48,372, which ranked third out of the nine comparable communities, including Elgin, as at that date (City Ex. 32).

Based on the City's final salary offer, as of January 1, 2000, Elgin's top step salary of $54,156 clearly will rank fourth out of the nine comparables. As the City strongly emphasized, however, the move from third to fourth based on these points of comparison was based on Elgin being in third place by a margin of $110 over the then-fourth place comparable. That is not a giant slip, I hold.

As of January 1, 2000, police officers at the top of the Elgin salary step would have been only $731 from the third slot and, based on the retroactivity agreement, in fact, will be placed in that position upon implementation of this Opinion and Award, I also point out. At the very least, the adoption of the City's final offer does not seem to materially jeopardize the position Elgin police officers have enjoyed among their counterparts across the comparable communities at the comparison point of the top step level gross salary, I thus conclude. And, as mentioned above, the average range of settlements for the historical comparable, on a percentage basis, is considerably less than the current final proposal on wages presented by this Union. That fact is important, too, in my ruling that the "slippage" is not as severe as the PBPA says it is.

All the above causes the Employer to argue that there is simply no reasonable justification to accept the Union's final proposal on wages, without some evidence to counter the City's proofs that its external comparability data strongly support acceptance of its final offer. The City urges that its proposal maintains the City's position among the comparables and there is no reason to change this formula. I am reminded that it is simply insufficient under Sections 14(g) and (h) to say the Union members want more.

The Union strongly contests Management's arguments as regards external comparability. It asserts that its Exhibits 16 and 17 stand uncontradicted on the record, and conclusively show that the

"external comparability factor" demands a catch-up as regards salary for the City of Elgin's police officers. It also is the testimony of the Union's chief negotiator, Union witness Poertner, that Management's points of comparison are completely faulty or fallacious, I note.

Union Exhibits 16 and 17 do indeed indicate that rank and file police officers are declining to some extent as regards "pure wages" among the comparables, as Poertner testified. The method of analysis used by the PBPA's main witness focuses first on officers having completed five years of service, I note. These exhibits then project out how these officers compare with their counterparts working in the comparable communities after five years, when the Elgin police have reached top pay, and then analyzes the relationship after ten years of service has been completed. The approach can fairly be categorized as a prospective approach, going through to contract's duration to what will be in January 2003.

On the other hand, Management's methodology of comparison is clearly based on a retroactive analysis, as I see it. The City looks to the first day of the prior contract, January 1, 1997, and compares the relative placement of its officers with comparable police officers working in the other municipalities. The City then goes on to compare the same officers at the same point of reference, January 1, for the next two years of the prior contract and under this current proposal. Essentially, it argues that the Union's methodology in fact improperly skews the results downward, because it is guessing at the future.

Both methods of analysis can yield proper results, I note. Consequently, I do not simply reject out of hand the Union's conclusion that as regards pure wages, Elgin's most senior officers will rank lower than fourth among the comparables by the conclusion of the three year period that is covered by this interest arbitration proceeding. The Union says that there was already a drastic slippage by its most senior bargaining unit members during the last labor contract between the parties. It now suggests that Elgin's police will slip even more as compared to the eight other comparable jurisdictions if Management's final wage offer is adopted.

The PBPA also points out that the City of Elgin is not the least affluent of the comparables in terms of average family income and home value, as noted above. It does not have the lowest per capita total revenue of the comparables. Therefore, what the Union has provided is strong evidence that there is a need for "catch-up" here, and the Employer's claimed reliance on pattern bargaining and parity cannot override that basic and obvious fact, this Union submits.

The major differences in the results of the analysis of this Union and this Employer as reflected by the testimony of record but also by Union Exhibits 16 and 17 and City Exhibit 52 is extremely significant in determining how I rule as to the wage issue. In Management's assessment of Elgin's relative position with its historical external comparables, it concludes that the City pays

its officers very well in comparison to this group of municipalities.

The Union, on the other hand, asserts that data it used for its comparisons surely demonstrates that Elgin's police officers reach top pay faster than almost anyone else, and then are locked in or topped out. That results in significant slippage in the senior Elgin police officer's relative position as to wages, especially in light of the fact that there are no opportunity for longevity pay in this City.

After considering all of the possibilities mentioned above, and seriously looking at the external comparability data, I conclude that the Union has not convincingly demonstrated that it needs "catch-up" at the present time, as that term is understood in interest arbitration. There is some evidence of slippage at the top end of the salary scale, certainly. That is not the case, apparently, with this City's firefighter group. However, when wages are looked at not as a projection but as the relative positions of comparison among the comparables as those positions have evolved over the years, Elgin police officers essentially are holding their own relative to the eight other municipalities in the comparability pool, I rule. The slip from third to fourth is not enough to demand parity or pattern bargaining be jettisoned, I hold.

Interest arbitration should always be an attempt at coming to a decision that at least somewhat closely reflects the likely result if private sector arm's length negotiations, including an

option to use the lever of a right to strike by a Union to achieve its goals, were permitted for peace officers under the Illinois Act. The parties are well-aware of the numerous instances in which I, as well as many other interest arbitrators pursuing this calling in Illinois, have stressed that basic principle. See Arbitrator Briggs' discussion along those lines in City of Elgin and Metropolitan Police Association, Unit #54, (1995) (City Ex. 18 at p. 10); see also Arbitrator Berman's decision in Village of Lombard, ISLRB Case #S-MA-87-73 (January, 1988), Appendix 7.

I also note that at least some of the Union's specific arguments on the overall wage issue are not supported by the proofs of record. One particular instance is its contention that "[w]ith the ease of mobility that is afforded to all residents of the Chicago Metropolitan Area, there are few barriers that prevent a mass exodus of highly qualified police officers to other departments." (Un. brief, at p. 9). However, the actual evidence adduced on this record does not show that there has been any significant loss of rank and file police officers to comparable jurisdictions as was found to be the case, for example, in City of Kankakee, ISLRB Case #S-MA-99-137 (LeRoy, 2000), at pp. 18-19.

There is no convincing evidence that the Union's final offers on salaries are critical for this City to remain competitive and maintain its current staffing levels and/or to retain its highly qualified police personnel, I find.

Based on the wage data available, as I have attempted to carefully outline above, the City's proposed increases of

approximately 11%, compounded, over the three years sufficiently maintains the City's rankings for top base pay and its position for starting pay and median police officer pay, I note. There is simply no reasonable justification to accept the Union's proposal on wages, without a much more convincing evidence to counter the Employer's proofs as to its relative position in accord with the applicable standards to be applied under the statutory scheme.

If the City's position among the comparables in fact is degraded to the extent anticipated by this Union, the wage reopener or next contract offers an opportunity for the PBPA to prove that either to the City or to another interest arbitrator, I also note. There is insufficient reason to change the salary percentage and formula, based on the current proofs of record, I find, because to simply say the Union wants more is insufficient under Sections 14(g) and (h), I stress. The wage reopener allows the PBPA to show whether real slippage with the comparables has happened or whether the PBPA has been "blowing smoke." That is an escape valve for external comparability, I hold.

Another criteria which the Act requires that I review is "The average consumer prices for goods and services, commonly known as the cost-of-living," 5 ILCS 315/14(h)(5). The data regarding the Consumer Price Index confirms my reasoning on external comparability and what is the standing of the City of Elgin in its "real" labor market, I hold. The cost-of-living criterion has been construed to be consistent with the Consumer Price Index ("CPI"). Village of Skokie, ISLRB #S-MA-89-123, a 1990 decision issued by

myself. See also Village of Lombard, ISLRB #S-MA-89-153 (Fletcher, Arb.).

During the course of the hearing, both parties submitted CPI data (City Exs. 45-46; Un. Ex. 12). Moreover, the Employer continued to update its CPI submissions, consistent with the statutory provision that the Arbitrator is directed to consider "[c]hanges in any of the foregoing circumstances during the pendency of the arbitration proceedings." 5 ILCS 315/14(7).

It is significant that the CPI for December, 2001, the latest information available on the record, shows that the CPI-U and CPI-W increase by 1.6% and 1.3%, respectively, for the 12 months ended December, 2001. The increase in inflation over the last three years has not been in excess of 3.0%. The City's compounded offer on wages for the period of the three years under discussion is nearly 11%, while the Union's compounded offer for police officers at or beyond ten years of service is 18%. The City's final offer on wages is closer to the actual increase than the Union's, I rule. Therefore, the CPI analysis also favors the City's overall offer on wages, I find.

In addition to the above-mentioned factors, the total compensation package also favors the City's final offer on wages, I note. The Act requires that in determining any award, I must take into account the "overall compensation presently received by employees," 5 ILCS 315/14(h)(6). In this case, in addition to base salary, the Employer suggests that what should be considered as total compensation includes such major benefits as longevity pay,

holiday pay, and group hospitalization and major medical insurance. The Union vigorously disputes that the total compensation argument presented by Management should have any significant weight, emphasizing that total compensation has never been used by these parties as a basis for wage settlements or as a factor in the interest arbitration cited above, decided by Arbitrator Briggs in 1995. Alternatively, the Union submits that its Exhibit 43 clearly demonstrates that when the Arbitrator "considers the full range of economic benefits available to officers in the comparable communities," this Employer is at the bottom end of the wage scale.

Further, the Union contests the fairness of Employer Exhibits 49, 50, 51, 52 and especially 53 as it argues Management has attempted to use them in reference to its total compensation contentions. For example, asserts the Union, the Employer attempted to argue that the benefits contained in the City's personnel manual should be considered as guaranteed benefits available to members of this bargaining unit. However, the Union maintains that the personnel manual does not provide directly benefits to City employees who are "under a collective bargaining agreement." The PBPA was required to negotiate so as to obtain for the police officers represented by it the benefits from the personnel manual, it asserts.

Moreover, the education benefit contained in the personnel manual does not rise to the level of a guaranteed contractual benefit. These facts demonstrate that total compensation is never easy to determine even for a specific municipality. As a basis for

an overall comparison among the applicable comparables, this factor is basically worthless, I am told.

The problem with that argument is, of course, that in accordance with the statutory scheme governing this interest arbitration, I am indeed required to give some consideration to total compensation. I am, however, not at all sure that the particular benefits used by Management to come up with its conclusion that the City of Elgin ranks second only to Joliet, among the comparables. Management's assessment is based on top step salary, longevity, if any, at fifteen years, and annual holiday pay, minus the amount that the employee has to pay toward the cost of family health insurance coverage (City Ex. 53). I note that in City of Hill Crest, ISLRB Case #S-MA-97-115, I was presented a total compensation grouping that included top base pay, longevity, and education pay. There is therefore indeed a possibility for very substantial differences as to what reasonably can be included in a total compensation calculation, I am convinced. Overall wages can be a slippery slope if benefits are "cherry-picked," I know.

Section 14(h) of the Act also provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in interest arbitration proceedings. 5 ILCS 315/14(h)(3). There has been no evidence that the City lacks the ability to pay either offer. However, having observed that the City has the ability to pay an increase does not mean that the City ought to pay an

increase unless it is satisfied that there will be some public benefit from such expenditure. City of Greshon and IAFF Local 1062, (Clark, 1984).

As stated above, the City does not make an inability to pay argument. Nor has the Union made a claim of increased productivity or changed circumstances which might support increases larger than the City proposal. In fact, as explained above, the City offered a substantial amount of evidence that such an increase is totally unnecessary to recruit or retain qualified officers. Since 1983, a total of 32 current members of the bargaining unit, including Richard Ciganek, the current Union President, left full-time positions with other municipal/state police departments to accept full-time positions with the Elgin Police Department, the record evidence shows (City Ex. 42).

Voluntary turnover among police officers in Elgin is also a relatively rare phenomena, as the City has shown. Thus, for the seven and one-half years prior to these proceedings, only nine police officers have voluntarily left the City's employ. The City urges that it has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends. Under these factual circumstances, I cannot disagree, and I therefore conclude that Section 14(h)(3) is another factor supporting the City's final offer on wages.

By far the most important factor in the City's favor, however, is the undisputed fact that the City's final offer on salary precisely tracks the terms of the City's negotiated collective

bargaining agreement with the International Association of Firefighters, Local No. 439, for the three years in question (City Ex. 24). And, as explained in detail above, in this regard, City Ex. 26 shows that across-the-board salary increases for police and fire for 13 of the past 14 fiscal years have been exactly the same.

I am also fully cognizant of the fact that two previous interest arbitrators deciding earlier cases involving the City and the Police and the City and Fire have accepted the vital importance of the ongoing parity relationship between the police and fire bargaining units in Elgin. It is also clear that I have in other interest arbitration cases considered such a long-standing parity relationship to be truly significant. See Village of Elk Grove Village, ISLRB Case #S-MA-95-11, at p. 65. See also my extensive discussion of parity and pattern bargaining in City of Cleveland, Cleveland, Ohio and Cleveland Police Patrolmen's Association, Ohio SERB Case No. 98-MED-01-039, at pp. 33-40.

It would be hard to conclude that parity does not exist between police and fire as regards percentage increases in salaries in the City of Elgin. Arbitrator Briggs already has held in City of Elgin and Metropolitan Police Association, Unit #54, his 1995 decision involving Elgin's police, that "[t]he primary reason for [the conclusion that the City's final offer was the more reasonable] stems from the historical pattern of police-firefighter salary increase parity established through free collective bargaining" (City Ex. 16 at p. 9). In so concluding, Arbitrator Briggs reasoned (City Ex. 18, at p. 10):

> The advisability of maintaining the historical negotiated salary increased parity between the Elgin Police and Firefighters Unit is quite clear. First, and as already noted herein, interest arbitration awards should approximate the outcome of free collective bargaining. Since each and every negotiated salary increase for Elgin Police Officers has been the same as those negotiated for Elgin Firefighters over the last ten years, the Union must show compelling reason to deviate from that pattern.

The PBPA in this instance has disagreed that parity is quite so hard and fast a rule as was found to be so by Arbitrator Briggs. It suggests that the single exception, in 1992, when the police bargaining unit received an across-the-board increase that was a quarter of a percent more than the salary increase received by the firefighter bargaining unit, refutes the idea of absolute parity. It also urges that the grants of Kelly Days received by the firefighters in their current collective bargaining agreement is additional compensation that broke parity. However, I find that the 1992 difference in salary increases between the two units simply is insufficient to destroy parity here. I also am not persuaded that the grant of additional Kelly Days to bring the firefighters up to the standards of the comparable jurisdictions in their current labor contract, given that similar increases in Kelly Days have been granted in earlier contracts where two interest arbitrators found parity to still exist changes the circumstances sufficiently to destroy the historical pattern of bargaining, and I so rule.

However, I also stress that if this Union had in fact shown that it was necessary to deviate from the existing internal parity

pattern, there is ample precedence to permit such a deviation. See Arbitrator Vernon's discussion on that point in City of West Bend, WI, 100 LA 1118, 1121 (1993).

In this case, I find the reasons for maintaining the pattern (the negative effect on the stability of bargaining and overall employee morale) are not outweighed, at this moment in time, from the Union's proffered proofs, based on my assessment of the lack of persuasive power of the Union's current proofs on that point. This is particularly so because no evidence of labor market factors, such as attrition and failure to get quality recruits was demonstrated on the record. There is not yet convincing proof that an unacceptable disparity relative to the externals exists, under the factual circumstances of this case. There may never be such a disparity. However, that call must always be made under the specific facts of each circumstance. Given that conclusion, I do not find that the reopener agreed to by the parties in this current contract is a nullity, and I so rule.

V. NON-ECONOMIC ISSUE 3 - PERMANENT SHIFT ASSIGNMENTS

A. The City's Final Offer

The City's final offer on this issue is as follows (Jt. Ex. 3(B)):

> Commencing with calendar year 2002, fifty percent (50%) of the assignments that are going to be made for police patrol positions for calendar year for the first shift, fifty percent (50%) of the assignments that are going to be made for police patrol positions for calendar year for the second shift, fifty percent (50%) of the assignments that are going to be made for police patrol positions for calendar year for the third shift, and fifty percent (50%) of the assignments that are going to

be made for police patrol positions for calendar year for the power shift shall be done by seniority. Example: If there [sic] going to be 18 police patrol positions on the first shift for the calendar year in question, then 9 of those positions will be available for bid by seniority. After fifty percent (50%) of the police patrol positions for each of the four shifts have been filled by seniority as provided above, the remaining officers assigned to police patrol positions may submit a written request to the Police Chief or his/her designee setting forth their preference for a given shift, together with the reasons for making the request. While such requests shall be considered (including the relative seniority) of the officers making such requests by the Police Chief or his/her designee, the final right to make the remaining shift assignments shall be retained by the Police Chief in order to insure that the overall needs of the Police Department are met. Such assignments shall not be made for arbitrary, capricious or discriminatory reasons.

However, as a threshold issue, the City maintains that the issue of permanent shift assignments as presented by the Union is not a mandatory subject of bargaining. As a result, the City maintains, this Arbitrator has no authority to rule on the issue of permanent shift assignments either under the rubric of the Act or pursuant to the parties' Alternative Impasse Resolution Procedure, Jt. Ex. 1, Appendix B, Section f, which the Parties have stipulated both govern all procedural aspects of this proceeding. The City thus requests that I rule on the issue of whether or not assignments to permanent shifts is or is not a mandatory subject of bargaining and, if I, as I should, determine the topic truly is a non-mandatory subject of bargaining, that I should not consider the merits of either the City's or the Union's last offer.

B. The Union's Final Offer

The Union's final offer with respect to permanent shift assignments is as follows (Jt. Ex. 3A):

Item 5. Hours of Work and Overtime

Section j. Selection Assignment to Permanent Shifts. ~~For employees with five (5) years of seniority or more~~ **All bargaining unit members employed as of December 1 of the year in which assignments are being made for police patrol positions for the following year on each of the four shifts (i.e., first, second, third, and power), shall be done by seniority bid.** ~~Prior to the making of the remaining police patrol shift assignments for the following year, employees with less than five (5) years of seniority as of December 1 may submit a written request to the Police Chief or his/her designee setting forth their preference for a given shift, together with the reasons for making the request. While any such requests shall be considered (including the relative seniority of the officers making such requests) by the Police Chief or his/her designee, the final right to make the remaining shift assignments shall be retained by the Police Chief in order to insure that the overall needs of the Police Department are met. Such assignments shall not be made for arbitrary, capricious or discriminatory reasons.~~

Notwithstanding the foregoing, the Police Chief shall have the right to transfer officers after they have selected, or have been permanently assigned to, a shift under this Section in order to meet the bona fide operational needs of the Department (e.g., loss of an employee filing a specialty position, retirement, injury or other long-term leave, changes necessitated due to personnel problems adversely affecting operations, etc.). Officers shall be given as much notice as practicable of such transfers. Such transfers shall not be made for arbitrary, capricious or discriminatory reasons. It is understood that where an officer is transferred to another shift due to departmental need, the department shall make necessary efforts to effect reassignment of such officer back to his former shift as soon as operationally possible. **In no event shall an officer be transferred from his bid shift for more than forty-five (45) calendar days in a calendar year.**

~~It is further agreed that, as much as possible, days off shall be granted as requested and employees shall be allowed weekends before and after scheduled vacations off. Absent emergency circumstances justifying a deviation, duty trades shall be limited to six (6).~~

~~The parties agree that the foregoing provisions of this section have been agreed to on a trial basis for the term of this Agreement. Whether permanent shift assignments should continue to be handled in accordance with said provisions shall be subject to negotiations between the parties for the successor collective bargaining agreements, provided that nothing herein shall be construed to waive the City's or the Union's rights to raise an issue concerning the mandatory scope of bargaining with respect to any shift assignment proposals that might be submitted by the Union or the City in such successor negotiations. The fact that the parties agreed to the foregoing provisions for the term of this Agreement shall not be considered precedential or otherwise create burden on any party seeking to negotiate changes.~~

C. A Summary of The City's Arguments on Permanent Shift Assignment

1. The Union's Proposal Concerning Assignments of Police Officers' Patrol Duty Solely on the Basis of Seniority is a Non-Mandatory Subject of Bargaining Under the Act

As just mentioned, it is the City's firm position that the Union's final offer on permanent shifts is not a mandatory subject of bargaining. The City relies upon Village of Evergreen Park, 12 PERI §2036 (Zimmerman, General Counsel, ISLRB, 1996).

2. Alternatively Should the Arbitrator Determine That the Union's Final Offer is a Mandatory Subject of Bargaining, the Evidence Clearly Supports Acceptance of the City's Final Offer on this Issue

With regard to the parties' final offers on this non-economic issue, the City suggests that the merits are fairly straightforward. First, the City notes that the issue of permanent shift assignments was not covered by the parties Collective Bargaining Agreement prior to the 1997-99 agreement. Rather, it was the

subject of a Department General Order that the Police Chief could modify at his discretion. If the Arbitrator were to accept the City's position on the non-negotiability of this issue, that means that the issue of shift assignments would again be handled pursuant to Departmental order. However, assuming, arguendo, that I determine that the Union's final offer of strict seniority for permanent bid assignment is a mandatory subject of bargaining, the City has demonstrated evidence that the Union's offer, if accepted, would adversely affect the City's ability to manage its operations. On that basis alone, the Union's final offer should be found inherently unreasonable, the City urges.

The City goes on to explain in detail that strict seniority bidding for permanent shift assignments had been granted to a limited extent by the last Department General Order in effect prior to the 1997-99 labor agreement. Then the parties negotiated, on an experimental basis, a permanent shift assignment provision which permitted selection of shifts by seniority for patrol officers with five or more years of seniority. When that provision was negotiated, the Employer apparently believed that the contract language incorporated into the contract meant that the percentage of officers assigned to the Patrol Division with more than five years' seniority would be assigned to each shift, i.e., "that percentage of each of the shifts would be allocated by seniority" (testimony of Deputy Chief Burns, Tr. 948).

Subsequently, the City suggests, when the Police Department implemented the permanent shift assignment language, for the first

time in accordance with its understanding of what had been agreed to, the Union filed a grievance. The Union took the position that all police officers assigned to the Patrol Division with more than five years of seniority had the right to bid permanent patrol shift assignments by seniority. The Union also asserted that there was no limitation on how many slots on each of the four shifts could be thus bid by seniority (Un. Ex. 23). While the Union's grievance on permanent shift assignment was denied at the Police Department level, it was ultimately upheld by the City Manager (Un. Ex. 23).

The City says that, as a result of the manner in which the permanent shift assignment language was implemented over the past three years, an overwhelming majority of the slots on the first shift (7:00 a.m. to 3:00 p.m.) were filled by seniority bid. Thus, for calendar year 1999, all but two of the twenty patrol officer slots on that shift were filled by seniority (City Ex. 64A). And for both calendar years 2000 and 2001, eighteen of the twenty-one slots on first shift were filled by seniority bid (City Ex. 64C).

Not surprisingly, according to Management, since the vast majority of the day shift slots were filled by seniority bid, the average years of seniority on the day shift for calendar year 2001 was 13.11 years versus only 7.5 years for the afternoon shift; 8.4 years for the midnight shift; and 6.6 years for the fourth slot (Un. Ex. 24).

It is therefore the position of this Employer that the filling of the four patrol shifts by seniority as the permanent shift assignment contract provision in the 1997-99 labor contract has

been interpreted has resulted in a dramatic "overweighting of experience" on the day shift. This is deemed a serious negative by Management, the evidence of record reflects.

Consequently, the City proposes a greater balance of experience on all the shifts. To the City, its "field training program" requires that the officers who are new to the Department serve on all three shifts early in their work experience. To the Employer, its proposal of 50% of the assignments for police patrol positions for each of the four shifts should be made on seniority is more reasonable than strict seniority could ever be. The operational needs of the Department require this sort of accommodation, I am told.

The City also contends that external comparability strongly supports its current proposal. Additionally, since the contractual provision in the predecessor agreement was negotiated as an experiment, and terminated as a contractual clause by its own terms, what the City is seeking is not a breakthrough or a change in the status quo, it notes. Finally, the logically sound reasons for the 50% minimum number of slots that would be filled by seniority on each shift, the City says, is not only consistent with what is done in the comparable municipalities, it makes sure that the Employer's management responsibility to protect the integrity of the Departmental operations is respected.

The welfare and interests of the public does not support the Union's proposal for strict seniority for permanent shift assignment, based on the overwhelming evidence of record, this

Employer argues. Internal comparability is not an issue, it concludes, because the firefighters' contract does not have any provisions providing for the bidding of shifts or space in assignments.

Accordingly, all the potentially applicable statutory factors in non-economic cases, that is, comparability, the interest and welfare of the public, and "other factors" (operational needs) demand acceptance of the City's final offer on this issue, if the Arbitrator decides the Union's final offer can be considered, by operation of law.

C. A Summary of The Union's Arguments on Permanent Shift Assignment

1. Pursuant to Appendix B, the Employer has Waived the Issue of Non-Mandatory Subject of Bargaining

The Union directly asserts that the City did not comply with Section 2(c)(i) of the parties' Alternative Impasse Resolution Procedure which provides that "Each party agrees that it will notify the other of any issue that it regards as a non-mandatory subject of bargaining not later than the first negotiation meeting where the issue is substantively discussed." The Union further notes that the result of a failure to raise objections that a particular item is a non-mandatory subject of bargaining at the first opportunity so to do is a waiver of that claimed defect.

To the Union, this particular provision was designed to protect the process of negotiations, as well as both parties involved in those negotiations. it also stresses that the City has acknowledged that it did not assert that the issue of permanent

shift assignments was a non-mandatory subject of bargaining at the first bargaining session where the issue was substantively discussed.

2. The Union's Strict Seniority-Based Permanent Shift Assignment is the More Reasonable Final Offer

First, the Union asserts that Management is seeking a breakthrough and a change in the status quo by its current proposal on permanent shift change. The Union argues that the prior contractual provision on shift assignments, by its terms, expired at the conclusion of the predecessor labor agreement. It further asserts that the general order and practice of these parties before that particular contract clause was negotiated in 1997 was to apply strict seniority to permanent shift assignment. The fact that Management now objects to the very practice it implemented over the years demonstrates the Employer's unreasonable posture in this instance.

In fact, the Union asserts, the Employer had offered more liberal terms on this topic during the parties' negotiations prior to the interest arbitration, and took back the more reasonable offer it had put on the table as direct punishment for this Union pursuing its rights to proceed to interest arbitration under the statute. That fact should be significant in any assessment of the reasonableness of Management's proposal on the topic of permanent shift assignments, and the bona fides of the parties' differing position on this subject.

The Union also stresses that during the term of the 1997-99 labor contract between it and the City of Elgin, Management

obviously misapplied the negotiated provision on permanent shift choice so as to manipulate the process unfairly. The Union presented at least two witnesses who suggested in their testimony that Management has used shift changes as a device for retribution and punishment, and not truly in the interests of either operational efficiency or the general welfare of the public. The compelling evidence as to that misuse should be another telling factor in its favor here, the Union argues.

Additionally, contrary to the Employer's contentions that strict seniority has harmed police operations, the record demonstrates that the Employer has not chosen to take advantage of the discretion vested in it under the prior contractual provision on shift assignments which reserved to Management the ability to transfer officers' permanent shift assignments if genuine operational needs or requirements demand such a shift. Simply put, if the first shift was too heavily weighted to senior officers, to the extent that there was a genuine adverse impact on operations, the Employer had the right to transfer patrol officers to cure the problem. Management never did, the Union stresses.

Most important, as the Union sees it, it is presenting what it characterizes as compelling evidence on this record that the shift pick issue is "a huge quality of life issue" for the rank and file patrol officers. Several witnesses credibly testified to the need to have stability and certainty -- and indeed, choice -- of permanent shift picks. Family concern, especially involving child care, are often at the bottom of an employee's desire to be able to

select a permanent shift by seniority. This is a critical "other factor" that should be given great weight in the Arbitrator's review of the equities as regards the two competing proposals, the Union concludes.

D. **Discussion and Findings**

I note initially that the parties spent a great deal of time arguing about whether or not the Union's strict seniority final offer for "shift picks" is or is not a non-mandatory topic of bargaining which then could not be considered as an appropriate option under the Act. Without spending undue time on the statutory requirements involved, or the reach and proper interpretation of the ISLRB General Counsel's Declaratory Ruling in Village of Evergreen Park, 12 PERI §2036, supra, I note that in the parties' Alternative Dispute Resolution Procedures, they negotiated how to handle that category of issue for purposes of collective bargaining and this interest arbitration.

The parties specifically agreed that if a topic was considered to be a non-mandatory subject by the Employer, it was required to tell the Union so at the first opportunity, that is, at the first time at which substantive discussions concerning such a topic occurred. The Employer has acknowledged that it did not so inform the Union of its belief that permanent shift picks based on strict seniority must be considered non-mandatory subjects for bargaining purposes. Although I understand that the attorney for the City asserts that that contention was forcefully brought to the Union's attention later in the process, when attorneys for both parties

became involved in these negotiations, that is not the negotiated requirement under the Alternative Dispute Resolution Procedure, by its plain terms.

Accordingly, I find this threshold defense by Management has in fact been waived here and I so rule.

I understand, of course, that Management is claiming that the specific terms of the experimental provision on permanent shift selection incorporated into the 1997-99 contract by these parties reserve the right to raise the issue of the non-mandatory nature of strict seniority shift assignment proposals after the conclusion of that particular agreement. I disagree, however, that that specific reservation "trumps" the particular agreements setting the parameters and procedures for dispute resolution for the current negotiations. The reservation of the issue by agreement of the parties in 1997 does not protect against or "trump" the direct obligation to assert that the topic raised an issue about scope of bargaining the first time a substantive discussion on permanent shifts occurred <u>because the undertakings of the parties specifically created the duty of notice at the earliest stages of bargaining.</u> That fact cannot be dodged by any of Management's arguments, I hold.

The parties also expressly agreed as to the result under these procedures if the "non mandatory topic" defense is not brought up timely, that is, waiver of that potential statutory defense, the evidence of record makes clear. There really is no discretion for

me to override these specific undertakings, I hold, given what the parties expressly agreed to and I so rule.

Regarding the <u>merits</u> of the proposals on permanent shift selection, I certainly am not persuaded that the Union is correct that Management's last proposal was made in bad faith, because it was not as generous as what was offered to the Union during the course of negotiations. It is routine during negotiations for both unions and management to make offers as a part of a package that might be considered more generous than individual, "stand alone" offers on the same topic if the overall package offer is not accepted by both sides. Such is the nature of the bargaining process. To impute bad faith or a desire to punish to this Employer under these factual circumstances is both unconvincing and unjustified, I specifically find.

On the other hand, the Employer's contention that there was no <u>status quo</u> existing prior to the parties' 1997 negotiations also seems disingenuous, I hold. As Management truly should recognize, the <u>status quo</u> does not only include negotiated contractual provisions, but also working conditions and work rules such as, in this case, General Order 85-A2, which governed shift assignments prior to the 1997-99 contract, I note. And as these parties are also well-aware, the concepts of "no breakthroughs" in the <u>status quo</u>, without a clear <u>quid pro quo</u> in interest arbitration is an idea to which I am strongly committed as being squarely demanded by the entire scheme and logic of the Act. Thus, I place considerable

significance on the fact that the current Management's proposal essentially would be a breakthrough in this instance.

Similarly, however, I am not convinced by the evidence proffered by the Union that in fact this Employer has intentionally misused its discretion in shift assignments as a political tool or a device to punish officers who have shown independence or who have been too vocal in their involvement in earlier Union-Management negotiations. It is clear that the witnesses called to testify by the PBPA sincerely believed changes in shift assignment were made in retaliation for protected actions on the part of these patrol officers. Argument is not evidence; conjecture is not proof. There simply is insufficient hard evidence to support the Union's general claims along these lines, and the specific testimony presented is similarly unpersuasive that shift changes were in fact made not for business needs or operational requirements, but out of personal pique or some sort of retaliatory motive. I so find.

Conversely, there are certainly sound reasons for the expressed Employer desire to have some discretion in how "shift picks" work themselves out. The reasoning contained in Village of Evergreen Park that an important Management responsibility is the assurance that work assignments or shifts are staffed by a sufficient number of experienced officers was also supported on the record by the Deputy Chief of Police. Certainly, another valid consideration of the Employer is that all officers received necessary training in Departmental operations. These considerations are not only inherent Management rights, but are

part and parcel of the Employer's duty to consider the welfare and interest of the public when scheduling the public safety officers. Beyond that, thought, there certainly is no reason why seniority cannot play a role in permanent shift selection.

Further, as discussed fully above, the City and its patrol officers obviously lived for a considerable period of time under General Order 85-A2, which governed shift assignments and gave great weight to seniority, I note. In this instance, a balance between competing considerations should and must be found.

Finally, the record evidence in this case is quite clear that the provision on permanent shift assignments negotiated in 1997, on an experimental basis, was in fact a negotiated attempt to draw just such a balance. The Employer asserted during those earlier negotiations that in order to maintain a level of experience that is realistic and equitable among the four shifts, it needed unfettered control over a portion of the shift assignments.

The Union maintained that seniority as the basis for permanent shift selection is a life style issue of great significance to the members of this bargaining unit. Management was provided by the terms of the negotiated provision with the authority to see to it that experience would be disbursed evenly among the shifts. However, apparently, a serious difference of opinion arose as to proper interpretation of the application of this provision and the City Manager ultimately ruled in the Union's favor with reference to how the provision under scrutiny should be applied. Police management responded perhaps in an over cautious fashion. The

authority to transfer consistent with the general welfare of the public and operational needs was not exercised. As a result, the first shift was too heavily staffed by the senior and experienced police officers, the evidence of record establishes.

In light of all of the above, it is clear that the parties did not give the negotiated provision a permanent shift assignment put into the 1997-99 contract on an experimental basis a fair trial. Since this issue has been stipulated to be non-economic, I, of course, have the authority not just to select from the two final proposals, but to engage in "conventional interest arbitration" decision-making. I also note that of the eight comparables, five jurisdictions have contractual provisions governing permanent shift assignments. In each, there are at least some significant limitations on the bidding of shifts by seniority. What the parties in this case negotiated in 1997 certainly is fully consistent with the similar negotiated terms in these five comparables, I also note.

Accordingly, I hold that the terms and language regarding permanent shift assignment set forth in the 1997-99 collective bargaining agreement between these parties be adopted and included in the current agreement, except for the final paragraph of that provision, which I specifically rule shall be deleted from the current, permanent shift assignment provision adopted under this Award.

VI. NON-ECONOMIC ISSUE 3 - ARBITRATION OF DISCIPLINE.

A. The Parties' Final Offer

1. The City's Final Offer

The City's final offer with respect to arbitration of discipline is to "[m]aintain the status quo" (Jt. Ex. 3B).

2. The Union's Final Offer

The Union's final offer with respect to arbitration of discipline is as follows (Jt. Ex. 3A):

> Item 14. Grievance Procedure
>
> Section a. Definition of a Grievance. A grievance, for the purpose of this Agreement, is defined as a difference of opinion between an employee covered by this Agreement and the City with respect to the meaning or application of the express terms of this Agreement and matters involving the suspension and discipline of employees. Disciplinary grievances shall be initiated at Step 4 of the grievance procedure.
>
> Section b. Grievance Procedure
>
> Step 5. Arbitration. If the grievance is not settled in accordance with the foregoing procedure, the Association may refer the grievance to arbitration by giving a written notice to the City Manager within (10) ten days after the receipt of the City's answer in Step 4. The parties shall attempt to agree upon an arbitrator promptly. In the event the parties are unable to agree upon an arbitrator, they shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators. The Association shall strike two names, then the City shall strike two names; the person whose name remains shall be the arbitrator; provided that either party, before striking any names, shall have the right to reject one panel of arbitrators. The arbitrator shall be notified of his/her selection by a joint letter from the City and the Association requesting that he/she set a time and place for a hearing, subject to the availability of the City and Association representatives. The arbitrator shall have no authority to amend, nullify, ignore, add to, or subtract from the provisions of this Agreement. He/She shall consider and decide only the specific issues submitted to him/her and his/her opinion shall be based

solely upon his/her interpretation of the meaning or application of the terms of the Agreement to the facts of the grievance presented. Where the parties mutually agree in writing, more than one grievance may be submitted to the same arbitrator. The decision of the arbitrator shall be final and binding. The costs of the arbitration proceeding, including the fees and expenses of the arbitrator shall be borne equally by both parties; provided however, that each party shall be responsible for compensating its own attorneys, representatives, or witnesses.

~~Section 6. Board of Fire and Police Commissioners. It is expressly understood that matters subject to the Board of Fire and Police Commissioners or matters that may be appealed to such Board are not subject to this grievance procedure and that sole recourse for such matters is with the Board of Fire and Police Commissioners.~~

~~Item 17. Board of Fire and Police Commissioners It is understood that to the extent that such matters as selection, promotion, suspension or discharge are subject to the jurisdiction of the Board of Fire and Police Commissioners, such matters are not subject to this Agreement. It is further understood that nothing in this Agreement shall limit the right of the Chief of Police to suspend a member of the Police Department in accordance with applicable law. Nor shall this Agreement limit whatever right an employee so suspended may have to appeal to the Board of Fire and Police Commissioners within five (5) calendar days after such suspension for a review thereof.~~

B. A Summary of the City's Arguments on the Arbitration of Discipline

The City's proposal regarding arbitration of discipline is that it should remain the same without modification, i.e., disciplinary appeals should continue to be handled by the Elgin Board of Fire and Police Commissioners. It is the position of the City that although the Union has argued that arbitration of discipline "is required by the Labor Act," IPLRA certainly does not require that a collective bargaining agreement in a bargaining unit covered by that Act have a provision concerning discipline.

There are other statutory provisions that govern discipline and discharge of police and fire, I am reminded, and is solely by virtue of the fact that the City of Elgin is a home rule municipality that negotiated variations in those statutes are permitted, the City points out. If there is no provision of the contract covering discipline, the requirement of IPLRA set forth in Section 315/8 that a labor contract must "provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement ... " does not come into play, by its own terms. See 5 ILCS 315/8, which surely cannot be interpreted as requiring that selectivity not covered under the labor contract must be grievable and thus able to be taken to arbitration, the City submits.

It is also the position of the Employer that the Union is seeking a breakthrough and a clear change in the status quo by its proposal here, without regard to the genuine factual circumstances involved. And it recognizes that several Union witnesses presented concerns that the Board of Fire and Police Commissioners is not in fact a neutral and impartial forum for hearing appeals of disciplinary action by the Department. Reasons for those concerns vary. For example, a primary reason for the Union's proposal is that the members of the Commission are appointed by the Mayor. Apparently, that has caused feelings on the part of some police officers that this body must be "political" in a negative sense.

Additionally, there was some testimony that members of the Board of Fire and Police Commissioners are not qualified to do

their jobs. Further, favoritism and clout might result from the political nature of the appointment process, at least two Union witnesses stated.

The Union also appears to argue that the actual Board of Fire and Police Commissioners hearing process is procedurally unfair. Thus, there was testimony that the Board could increase a period of suspension for an officer who might appeal discipline of five days or less imposed by the Department. The Union also suggested that the ability to increase the discipline available to the Board is used by Management in the Department to pressure officers not to exercise appeal rights to that forum.

C. A Summary of the Union's Arguments on Its Final Offer for the Arbitration of Discipline

The Union explicitly bases its offer on the fact that rank and file police officers believe the Board of Fire and Police Commissioners' composition and procedures are potentially unfair or not evenhanded. According to the Union, officers desire to have discipline heard by a neutral third party "who is a professional in the field of labor relations." Moreover, the logic of IPLRA affords the Union's final offer, in the sense that it indicates a policy choice under this Act savoring grievance arbitration.

Moreover, the lawful authority of the City is certainly not in question, since Elgin, as a home rule municipality, in fact is authorized to grant the arbitration of discipline pursuant to a labor contract's negotiated provision.

Implicit in its final offer is the Union's belief that perception of the fairness of a system for assessing just cause for

discipline is absolutely critical in its acceptance by those who must live under that system. Basically, the Union has proposed the change from the Board to the Arbitrator for discipline of five days or less. In addition, the PBPA argues that its proposal would cover discipline of more than five days, which currently is directly determined by the Board of Fire and Police Commissioners, absent an agreed upon discipline between a police officer and police management for such discipline in excess of five days. The Union maintains that the current situation leaves it up to the Board to decide what, if any, disciplinary action be taken in excess of five days, even though this Board has no special expertise or training in the realities of police work or the principles of personnel and rational management.

In short, the Union argues not that the Elgin Board of Fire and Police Commissioners does not have qualified members, but that it does not have special expertise, the appearance of impartiality, or freedom from political pressures emanating from the City's administration or the public.

D. Discussion and Findings

Here, although the Union has offered no expressed quid pro quo for its final proposal, I am not sure its specific demand can in any way be deemed a "major breakthrough" that the Union ordinarily could not obtain through bargaining. If the interest arbitrator is truly obligated to attempt to assess what a likely bargain would be through arm's length negotiation between these parties, I find

sufficient evidence to rule in favor of the Union on this non-economic issue.

First, although there is no evidence to support the perception that the members of the Elgin Board of Fire and Police Commissioners are not qualified or dedicated, there is no getting around the fact that these Commissioners are appointees of the Mayor. Politics is not always necessarily bad, I note, and certainly the Mayor and the community's input on matters of personnel is not some sort of inherent evil, I recognize.

In addition, I believe that the testimony regarding potential increases in discipline and the threat of such increases as a chilling factor to an individual officer's right to appeal to the Board is essentially unconvincing. In my experience, if a police officer believes he or she has been unfairly deal with, ordinarily there is no reticence to exercise appeal rights or demand due process.

On the other hand, perception is often reality. Any system set up to assess just cause for discipline must be perceived by at least most of the participants as fair and impartial. Under a collective bargaining arrangement, employees ought not be required to accept a pre-existing model for resolving disciplinary matters, if they lack basic confidence in that procedure and press a proposal for a voluntary procedure "which is nearly universal under collective bargaining agreements, i.e., arbitration." Therefore, although I certainly do not accept necessarily the factual underpinnings of the conclusions of bargaining unit members that

the Board of Fire and Police Commissioners might not genuinely be neutral, feelings are entitled to weight, whether fully rational or not.

That the Board of Fire and Police Commissioners is composed of unqualified individuals or does not reflect dedicated work by its members, the fear that politics may control is adequate and sufficient to show that perhaps a more neutral alternative would be negotiated between these parties, if free bargaining were permitted.

Overall, the evidence of at least fairly wide-spread distrust of the current process for reviewing discipline is sufficient to support the Union's final offer. Although it is highly unlikely that most of the reasons for the widely held perception are accurate or even fair, the point is that there is not a heavy cost burden in the adoption of a system where both parties would have confidence and, hopefully acceptance. For that reason, I rule in favor of the Union on the issue of arbitration of discipline. Although I am the first to recognize that, as a neutral, my adopting of this proposal might smack of self-dealing, still I did not motivate the several Union witnesses to testify to their distrust and negative perceptions concerning the present procedures for review of Departmental discipline.

For all these reasons, I rule in favor of the Union on the issue of arbitration of discipline and adopt that proposal as being the most consistent with the applicable statutory criteria.

VII. NON-ECONOMIC ISSUE 4 -- RESIDENCY

A. The Parties' Final Offers

1. The City's Final Offer

The City's final offer on residency is to "[m]aintain the status quo, as well as the related Side Letter" (Jt. Ex. 3B).[3]

B. The Union's Final Offer

2. The Union's Final Offer

The Union's final offer with respect to residency is as follows (Jt. Ex. 3A):

Item 28. Residency

~~Residency requirements in effect at the time an officer enters police service for the City shall not be made more restrictive for that officer during the term of this Agreement.~~

~~An employee may be temporarily relieved from the residency requirement stated above where, in the City's exclusive judgment, special circumstances exist, justifying such relief.~~

[3] The following is the text of the Side Letter referred to in the City's final offer on residency (attached to Jt. Ex. 1):

> Notwithstanding the residency provisions in the parties' 1997-1999 collective bargaining agreement, if the City Council adopts a residency ordinance for any other represented group of City employees (i.e., firefighters, public works, and clerical/technical) that is less restrictive than the residency ordinance in effect on June 15, 1998 for the sworn police officers covered by this agreement, the provisions of such ordinance shall be deemed to be likewise applicable to the sworn police officers covered by this agreement on the same terms and conditions and with the same effective date as for such other represented group of City employees.

~~Employees hired as police officers and officers seeking promotions after December 26, 1993 may be required by City Council action to reside within the City of Elgin Corporate limits within eighteen (18) months from the date of hire or promotion, or within eighteen (18) months, from the date of enactment of any modified residency ordinance.~~

Officer shall be required to live within the residency requirement outlined in the map attached hereto as Appendix C.

B. A Summary of the Parties' Arguments as to Why the Arbitrator Should Accept Its Final Offer on Residency

1. The City

The City strenuously argues that the current status quo favors its position. According to its analysis, the issue of residency was first addressed in terms of contract language by the parties in the negotiations that led to the 1994-96 collective bargaining agreement.[4] This initial contractual provision dealing with

[4] The evidence shows that the parties agreed to the following new Item 28, entitled "Residency":

> (a) Residency requirements in effect at the time an officer enters police service for the City shall not be made more restrictive for officers during the term of this Agreement (a copy of the geographic residency requirements in effect as of the effective date of this Agreement is attached hereto as Exhibit C).
>
> (b) An employee may be temporarily relieved from the residency requirement stated above where, in the City's exclusive judgment, special circumstances exist, justifying such a relief.
>
> (c) Employees hired as police officers and officers seeking promotions after the effective date of this Agreement may be required by City Council action to reside within the City of Elgin Corporate Limits within eighteen (18) months, from the date of

(continued...)

residency was agreed to by the parties prior to the interest arbitration proceeding before Arbitrator Briggs and specifically anticipated the City Council's adoption of a modified residency ordinance on May 25, 1994, the City points out.

It is the further position of this Employer that although these negotiations occurred before the change in the provisions of IPLRA effective in July, 1997, which permitted residency to be bargained as a mandatory topic, still, the City reasons, the 1994 negotiations between the parties reflected a meeting of the minds between Union and Management on that topic.

More important, as the City sees it, in the succeeding round of negotiations that ultimately led to the voluntarily negotiated 1997-99 collective bargaining agreement, the Union put the issue of residency on the table once again. However, the Employer stresses, the City of Elgin and this Union ultimately agreed "to maintain the status quo with respect to residency for the term of the contract," (Jt. Ex. 1, Item 28, at p. 23). In addition, the City emphasizes, the parties also agreed to a so-called "me-too" Side Letter, the contents of which are contained in footnote 4.

Significantly, then, the residency provision in the 1997-99 contract was negotiated at arm's length at a time when the PBPA could have demanded arbitration over it. Therefore, the City argues, there was a negotiated status quo on residency which this

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[4](...continued)
enactment of any modified residency ordinance.

(City Ex. 15, pp. 21-22)

Union is now seeking to change. Accordingly, the PBPA is obligated to show by compelling evidence specific reasons that its demand for change should be accepted in this interest arbitration, pursuant to the applicable statutory criteria. The Employer goes on to suggest that the PBPA has utterly failed to do that, according to the City's assessment of the evidence of record.

In discussing the Union's burden of proof on the residency issue, the Employer also suggests that since May 25, 1994, all police officers who have joined the department hired on with the understanding that residency was required. The City therefore asserts that any Union claims that a loosening of the residency requirement is mandated by equity flies in the face of the undisputed fact that all new hires in the Police Department, as well as all other City employees hired after May 25, 1994, had clear notice of the existing (and now negotiated) residency rules.

Moreover, there is not a scintilla of evidence that the residency requirement has not been consistently applied by the City of Elgin to all its employees covered by that provision. Internal comparability, certainly a major statutory factor, favors the maintenance of the status quo and the rejection of the Union's final offer, the Employer urges.

The City also urges that it understands that the Union has argued that Elgin's officers believe they need to be free of threats to the safety of the officers and their families. The City agrees. However, it claims that there is no persuasive proof that Elgin's residency requirement, as opposed to the dangers inherent

in police work, has caused officers during off-duty time to come near harm's way.

To the Employer, the numerous examples where an arresting officer later came into contact with someone he or she had arrested near the officer's residence or while shopping, and the officer or his or her family was threatened or intimidated, have not been shown to have been connected to geography or physical propinquity. The contacts were often accidental, incidental, or happenstance. They could happen if the officer lived one, two, or five miles from Elgin's borders, the City says.

It is also true, the City asserts, that the major incidents where shots were fired into officers' homes occurred to volunteers (DARE officers, etc.) who intentionally lived in high crime areas. Extra pay, benefits, and professional commitment put the officers in those settings. Residency cannot be found to be the root cause for those examples of criminal activity directed at these officers or their homes, because the officers could have chosen to live in the lower-crime areas of Elgin under the current residency rule, without incident, the City submits. Safety concerns cannot override the real need for community residents to do community policing, the City also asserts.

Finally, Management also asserts that the Union's current proposal takes no account of the potential impact on the other employment groups, especially the Firefighters, which is subject to a collective bargaining agreement but has not made residency a high-priority demand, or, at least, did not do so in the last

negotiations between the Firefighters and the City. The testimony at hearing shows that the Firefighters are interested in also obtaining a loosening of the residency requirement for them, too, essentially for free.

2. **The PBPA**

The Union emphasizes that the residents of Elgin are the ultimate employers of public employees. In this respect, the Union points out that the witnesses from the general public and neighborhood groups called by it testified they favored a loosening of the current residency requirements. These citizens accurately reflect the majority opinion of the citizens of Elgin, the PBPA says. To the Union, the clear testimony of the public officials, including the Mayor, who testified in these proceedings that it is their sense that the general public strongly want their police, firefighters and other City employees to be their neighbors and reside in the City so that all such employees have a direct and immediate stake in the welfare and health of the community is not reality. Politics is what is at play here, but it is not democracy, the Union agues.

The two public officials who testified asserted that it was their professional assessment that the attitude of the general public is strongly in favor of retaining these high paying jobs for citizens of Elgin, but neither said that there was proof the police and their families "shop Elgin" rather than going to regional shopping centers outside the legal City boundaries. There is also no direct proof that the "grandfathered" officers who live outside

Elgin's borders spend less or more than the officers forced to live within the City's confines, the Union avers.

Both Mayor Schock and Member of Council Wasilowski testified that it is simply "more likely" that the public monies spent in salaries would at least in part be returned in the form of purchases and consumer spending by the police officers and their families in Elgin proper, if the officers continue to live in this City. That is insufficiently convincing, the Union contends.

The Union also submits that the City has not in any way shouldered its burden of rebutting the Union's evidence that the current residency rule has created hardships for either the police or their families. The City was at pains to point out there are excellent housing opportunities in the large geographic area currently encompassed by the City, and that it is anticipated that the City limits will continue to expand. What they did not show is why officers who seek a "safe harbor" outside the City should not be able to exercise that basic right.

Several Union witnesses noted that incidents occurred during off-duty hours where officers and their families come into contact with individuals who wanted to do them harm, or at least threatened them by words or attempted to intimidate the officers by their actions. These incidents happened in shopping centers; while officers were at home; in one instance while an officer was driving home; and while an officer was picking up a child at school. To these witnesses, police work inherently is dangerous work. However, each witness claimed, the idea that danger would be

brought home to them because they were being forced to live in the same community as those the police arrest or with whom they otherwise come into professional contact was never part of the bargain when they hired on.

It is also the firm position of the Union that several other "special" factual circumstances used by this or interest arbitrators in deciding to grant the residency proposals of the Union in similar cases have been conclusively shown to apply to the City of Elgin. For example, although Management has attempted to argue that the status quo favors its current strict residency rule, and that the Union is somehow demanding a breakthrough by its proposal that all police officers be governed by the geographic limitations currently available to the "grandfathered" officers who worked for this Employer prior to May, 1994, the evidence of record completely contradicts this Management argument.

As this Arbitrator has already held on several occasions, until the change in the applicable statutory provision, residency was considered a non-mandatory subject of bargaining. As such, if there was no agreement concerning residency, the Employer could promulgate whatever ordinance, regulation, or general order it chose on this subject, and the Union had no method to force bargaining or to move the issue to interest arbitration.

Therefore, no agreement concerning residency made by this or any other union prior to the change in the law in July, 1997, could be deemed a negotiated agreement on a status quo. Obviously, that is in fact the circumstances covering the residency requirement

incorporated into the parties' labor contract for the first time in their 1994-96 collective bargaining agreement.

It is to be remembered that these parties were already engaged in the collective bargaining process when the change in the law that made residency a mandatory topic for bargaining came into effect. As Management well knows, Arbitrator Briggs had also already issued an interest arbitration award indicating that, under identical circumstances, he would not resolved a residency dispute submitted to arbitration without the parties having had the full opportunity to negotiate for the entire period of the collective bargaining process on that topic. Arbitrator Briggs therefore had decided that the residency issue should be put aside until the next contract in that other case.

Based on these parties' assessment that a similar result was likely should the Union have forced the issue to arbitration in 1997, the parties agreed to keep the then-current residency provision, without negotiation or agreement that this in fact became the status quo by that action. To the Union, then, the first time the residency issue could have been bargained to impasse was in these current negotiations. It is thus plain, the Union asserts, that there is no status quo favoring Management's current proposal. The Arbitrator should examine both the final offers presented by this Union and Employer as to their reasonableness in light of the statutory factors, and both offers should be judged on precisely the same footing, the Union urges.

The Union also rejects the Employer's argument that it did not offer to exchange benefits or to make concessions so as to obtain a loosening in the current residency requirements for officers hired after May, 1994. The Union states that in negotiations it attempted to explore many different ideas on this issue with the City. As the Union tells it, Management rebuffed each Union proposal, with a response that there was no authority on the part of the Management negotiators to "negotiate residency." Based on these particular circumstances, the Union states, it should be absolutely obvious that the Employer would not negotiate in good faith on the residency topic. As a result, the Union was stymied from offering Management any "quid pro quo," since it was not going to bargain against itself.

It is also the position of the Union that its entire course of conduct illustrates how important the residency issue was in the negotiations that preceded this interest arbitration. It is to be remembered, for example, that President Ciganek testified without rebuttal that this was the central issue to the rank and file. Also, Union Local President Ciganek indicated in his testimony that this issue was one where the Union was willing to make significant trades or concessions for a Management agreement to loosen residency. It is therefore completely misleading for this Employer to claim that there was no "quid pro quo" ever offered by the Union in on-the-record bargaining, since the entire thrust of the negotiations on the part of the Union was focused on obtaining its current residency proposal through give-and-take bargaining.

The Union also argues that its course of conduct proves this to be the case. After all, the delay in any receipt of a pay raise by the police officers was anticipated to be very substantial. In point of fact, nearly the entire period covered by the economic proposals has gone by, and still no pay increases have been received. That fact itself demonstrates in the strongest way possible the commitment of this Union and its members to obtaining a change in residency and their willingness to forego benefits or make concessions to obtain that goal, the Union argues.

It is also evident, according to the Union, that its members have engaged in several activities which show their commitment to the residency proposal proffered by the PBPA. Members of the bargaining unit participated in informational picketing at the beginning of these proceedings, I am reminded. Political pressure and an attempt to reach out to the community on this issue also has been verified by the testimony of several witnesses on this record.

Moreover, it was the testimony concerning the attitude survey presented into the record which was undertaken by the Union leadership. This survey shows that more than half of those that responded firmly believed that the residency issue has had an overall negative impact on the morale of the Department and on the rank and file police officers. The survey also shows that nearly universal perception by bargaining unit members that the issue should have been resolved during negotiations and that Management has been unfair because it presented no counter-proposals or offers on the topic that could have been evaluated or considered as a

possible basis for settlement. This is "the" issue that caused the negotiations between these parties to break down, Union President Ciganek directly testified.

The Union is quick to point out that several other factors demonstrate that its final proposal on residency is by far the more reasonable one. For example, the Union says, the Employer's attempt to assert that community policing is best done by those officers who actually live within the boundary of a municipality is certainly not what either scientific research shows. Impartial scholarship discloses that it is the commitment of the police officer, and not where he or she lives, that is the critical factor for successful community policing. The testimony of all witnesses in this proceeding who discussed the topic reinforces that conclusion, too, regardless of whether the witnesses were called by the Union or Management.

Additionally, any careful analysis of how selection and recruitment really works shows that in marketing for police recruits, residency is a hindrance on the ability to recruit in the widest geographic area, the Union claims. The testimony of Deputy Police Chief Burns and others on the Management side reinforce the fact that the current residency rule has been a negative factor, at least at times, the Union also suggests. Residency requirements expanded beyond formal City boundaries is the "industry standard," both based on practical considerations and careful research, the Union declares.

It is also the strong Union contention that it is of major importance, under the statutory standards, that the City of Elgin's residency requirement has not been a long-standing rule or historical requirement. In fact, argues this Union, there have been at least six different positions that the Employer has had on its residency requirement in the past 28 years. It is also important that the current mayor, Mayor Schock, testified during these proceedings as to his firm commitment on residency. Yet, the Union avers, this same Mayor Schock, as a councilman, opposed the City limits requirement publicly and by his own vote in 1994. Mayor Schock clearly has changed his mind, perhaps based on "political realities."

The Union submits that it is of course permissible for anyone to change his or her mind. That basic fact of human nature is perhaps the strongest counter argument to Management's often pronounced contention that the police officer should not be permitted to demand a change in the residency rule, since all who have been hired since May, 1994, knew about that rule and acknowledged that they had notice of its terms in writing. The same logic which caused Mayor Schock to testify at the arbitration that it is "never too late to learn," applies with equal force to the officers who have lived with the personal safety threats and other negative effects to their morale and life choices dictated by the unreasonable City-limits residency rule currently in effect, the Union concludes.

The point is, suggests the Union, that if there were positive incentives for living within the City limits, those incentives likely would help to implement the desire of the leadership of the City to "keep the high paying jobs" sponsored by public monies in Elgin. It is only common sense, argues the PBPA, that in fact there will not be a mass exodus of police officers from the City, if the residency rule is loosened now. Practical considerations such as the cost of moving, ties to neighborhoods and schools, etc., certainly make that assumption highly logical.

An even stronger proof of the likelihood that police officers will not run from Elgin is the fact that the majority of the "grandfathered" police still live there, too, the Union stresses. Yet, the Union also argued that it is common sense that "any employee working for any employer in any industry will be better able to perform their duties if they do not have to worry about the safety of their families while at work." That some current officers desire a safe harbor, or wish to live in the country, should be a matter of personal choice and not public policy or interference, the Union concludes.

In short, despite the best efforts of Management to prove otherwise, common sense and all applicable statutory factors strongly favor this Union's final proposal, it submits.

C. Discussion and Findings

After careful consideration and review, I find that the evidence supports the Union's final offer on residency as the most reasonable. My reasons for that conclusion are briefly summarized here.

Initially, it is to be noted that at least some interest arbitrators and scholars seem not precisely sure whether the statutory criteria set forth under Section 14(h) of IPLRA apply with the same force to non-economic issues as to economic ones. As should be evident from several of my earlier interest awards, I certainly subscribe to the position that the statutory factors are fully applicable and should be applied with the same care and precision to the non-economic issues as to the issues the parties agree to be economic. Otherwise, frankly, I do not know what an arbitrator would base a decision on, aside from his or her personal philosophy as to politics and economics.

I also am not convinced that given the entire theory and structure of this Act, and especially if an arbitrator could decide the non-economic issues without the strongest statutory guidance, there would be a genuine question of whether "Dillon's Rule" and the whole delegation and non-delegation argument that troubled the Illinois courts with reference to public sector bargaining before the passage of IPLRA would not be deservedly reawakened.

I further reason that there certainly still is a reason for the distinction between economic and non-economic issues that this statute makes. The ability of the Arbitrator to engage in

"conventional" interest arbitration, that is, not to be obligated to accept the last and best offers of the parties on a "either/or" basis, surely is reason enough for the basic distinctions to have been imbedded in the statute by the legislators, I hold.

Turning to the statutory criteria, I find that internal comparability certainly does favor Management. Residency is the type of issue where comparisons with other City employees are constantly made, on an individual basis. Moreover, the testimony of two City witnesses and the President of the Local IAFF unit is to the effect that the residency issue is of some significance to the firefighters and that Union's leadership, at least, is clearly paying detailed attention to what happens in the current interest arbitration.

It is also true, as the Employer has suggested, that bargaining between the City and the IAFF unit occurred in 1999, well after residency had become a mandatory subject of bargaining. The results are no question that the Firefighters Union neither pressed for nor obtained a loosening of the City's ordinance or the residency terms contained in the collective bargaining unit between the IAFF and the City of Elgin.

It is my further conclusion that all other City employees operate under the same rules as do the police and fire, and, the evidence shows, the rules are uniformly and firmly enforced.

On the other hand, external comparability strongly supports the Union in the current case, I rule. Despite Management's claims to the contrary, external comparability can play an important role

in interest arbitration, even on such issues as residency. See City of Southfield, MI, 78 LA 153, 155 (Roumell, 1982).

With regard to the evidence adduced on the existence and non-existence (or strictness or relative laxity) of residency requirements in the eight external comparables, the proofs show that only two of the comparables, Joliet and Waukegan, have residency rules similar to that of the City of Elgin. The Employer seeks to distinguish the circumstances existing in the six remaining external comparables by contending that there is much higher cost of housing in those jurisdictions. Thus, Mayor Schock testified that he was not surprised that Arlington Heights, Evanston, Oak Park and Skokie did not have such residency requirements, due to the high cost of housing in those jurisdictions.

I did not make the historical comparability pool; the parties did, I note. Additionally, Naperville, which is, in many respects, logically a comparable, has been kept out of that pool because of the long history of an acceptance of the eight externals as truly comparable for collective bargaining purposes. Therefore, I am less than persuaded that, on this one issue, I should totally disregard external comparability, as Management seems to suggest, because of the differences among the group with reference to affordable housing. However, I do recognize that Waukegan and Joliet are probably closer in terms of housing costs and they are the two municipalities with city-boundary residency rules. To some extent, but certainly not completely, that does provide something

of a discount on what is clearly a favorable external arbitrability picture on this specific issue. But external comparability clearly favors the Union's final proposal on this topic, I hold.

The statutory criterion of the public interest and welfare is much more a mixed bag, the record seems to demonstrate. As noted at several points above, several witnesses testified on behalf of the Union as to the disadvantages to the PBPA membership of the current residency requirements. It is the cumulative effect of these witnesses' testimony that the City's residency rules restrict police officers' personal freedom. The Local Union President stated that the policy affects police officers' private lives by restricting where they and their families can live, the churches they can conveniently attend, the schools their children can attend, and their opportunity to engage in social activities. These restrictions affect employees most fundamentally, according to the PBPA, and thus the residency policy should be required to be supported by compelling evidence, which is obviously absent on this record, the Union goes on to directly argue.

The Union also expressed concern with off-duty incidents involving police officers and their clientele. One witness testified that he had a staring contest at the school with an individual he had arrested. Another testified that he was followed on the way home by a "gang-banger" and known auto thief and that he felt threatened by that fact. A third witness testified as to shots fired into his residence while he and his family were present there.

There were newspaper articles and statements, as well as testimony, that other police officers suffered harassment, primarily verbal, but sometimes involving physical conduct, during off-duty time spent at or near their City residences. However, aside from the DARE volunteers, many of these incidents occurred in regional shopping centers or the like that could just as easily have been located beyond the City boundaries, I note.

Additionally, at least some of the incidents seemed to result of coincidence or accident. For example, when one "contact" turned up next door to an officer because he was on a yard and tree trimming crew, the officer testified he was upset and irritated. However, it is simply true that since this is such a mobile society, that sort of thing could have happened if the officer lived in South Elgin or in the other areas permitted the "grandfathered" officers currently, I find.

On the other hand, in this particular case, no Management representative directly testified to any operational advantages flowing directly from the City's current policy on residence. That makes sense, given the number of "grandfathered" officers who are not required to reside within the City's boundaries. It also makes sense, because Elgin is so spread out geographically, that some operational problems more likely come up if an officer resides on the Far West side and is needed in the Southeast corner of the City, for example. The geographical realities of the Union's final proposal seem equally consistent with operational needs, I find, based on my reading of this extensive record.

There was, of course, some testimony concerning increased neighborhood stability when police live in the community. Certainly, Mayor Schock also presented testimony concerning the economic and political advantages of the current residency policy to the residents of the City of Elgin. He noted that when police officers live in the community, there is an increased likelihood they will participate in the community through service and family organizations. He also thought such an officer would likely identify more closely with Elgin. Those are psychological, economic and political pluses, Mayor Schock said.

The Mayor expressly stated that he has a sense that the general community desires that police officers, as public employees, have a responsibility to contribute back to the community by paying back real estate taxes and buying goods and services in the neighborhoods. Equally important, maintaining the current residency requirements for the police officers provides consistent application of residency requirements among all City employees, he and Councilman Wasilowski also testified.

In sum, the Management witnesses called to testify suggest that their political, social, and economic realities would be negatively impacted by an adoption of the Union's final proposal. As with many other municipalities, apparently, the political leadership does not discount the emotional impact of a residency change, either, I note. The Mayor testified that a relaxation or expansion of the residency requirements had to have the appearance that public employees desired to leave the City because it was not

an acceptable place to live, when all the efforts of the current administration is to keep good jobs in Elgin and to prevent just that sort of perception from taking hold. Thus, Mayor Schock believed that the Union's demand here sent a negative signal to his constituents that people who work for the City desire to move.

I recognize that the City Administration anticipates significant social, philosophical and political consequences if its current residency requirements are liberalized to permit any police officer to live where the "grandfathered" officers currently may do. In substance, the City Administration is saying that, in their view, at least a substantial number of citizens in this racially and culturally diverse community would be extremely unsettled or upset if the Union's demands for an extension of the scope of the residency rule were accepted by the Arbitrator.

On the other hand, as the Union stressed, there is some hard evidence that an expansion of the residency rule for sworn officers might benefit recruiting and hiring. Moreover, the evidence of record is quite clear that Elgin is growing both geographically and economically. The City prides itself as being an outstanding place to live. If that is truly factual, a more liberal residency rule will mean little in its daily application, I believe.

Also, the fact of any liberalization likely will not create a mass exodus of police officers and, the Union postulates, will in fact send no negative signals at all, or would not have if the City had not chosen to take its hard-line stance and create an impasse where none was necessary. I believe the experience in other

jurisdictions (see the eight comparables) and the history of the changes over the years in Elgin fully support that suggestion.

However, I underscore here the fact that Management's assessment of the political realities and negative symbolism which it wishes to avoid is its right and the making of that kind of evaluation is probably its obligation. The "public interest" criterion does give the appointed and elected officials the right and indeed the responsibility to make just such an assessment, I find.

I also note that, as several other interest arbitrators and I have already often stated, "off-duty police officers and their families are also members of the public." The "public interest" criterion therefore applies to them too, I further rule. I adopt what I believe is the majority position that their safety concerns are valid and should be considered under the public interest and welfare criterion. The perceptions of at least a part of the bargaining unit that their safety would be embraced by an ability to live outside Elgin's borders is a valid factor to consider, I hold, and one that favors the Union's last and best offer.

In the current proceeding, though, there is perhaps some proof, but not an overwhelming amount, that the residency requirements have actually created hardships for police officers and their families. The problem is that those hardships, putting aside DARE officers and the like, would exist under either proposal and exist because of the inherent nature of police work, I am

persuaded. It is clear from the record that the actual evidence in this case is nowhere as near as strong as that found to exist in Town of Cicero, ISLRB #S-MA-98-230 (Berman, 1999), at pp. 41-42; or in City of Kankakee, ISLRB #S-MA-99-137 (LeRoy, 2000), at p. 19; pp. 22-28.

As I have said in an unsigned opinion in another jurisdiction which is not, thus, an official case, the balance to be drawn is a difficult one that should have been negotiated by the parties, in an ideal world. Frankly, as I explained above, what I have been engaged to do is to apply the statutory criteria to the specific facts of the case and not to make political or philosophical choices for either this City or its employees. It is my job to decide the case, though, as the parties have stipulated.

When the purpose of interest arbitration is what is brought into focus, interest arbitrators are always obligated to attempt to ascertain what the parties truly would have achieved at the bargaining table, if arm's length bargaining were permitted to the degree of letting the Union have a lever of the right to strike and the Employer to have the concomitant right to lock out or permanently replace employees. Essentially, what has been evidenced here in the instant case, in the clearest way, is that the residency issue is a "strike issue" for this bargaining unit. As the Union has so persuasively argued, it is the issue in the whole case. It is a fact that the Union and its members delayed getting any pay raise for well over two years to arbitrate residency; residency is the core issue that brought them to this

point in the process, President Ciganek testified, without rebuttal. If the parties bargained the way it is done in the private sector, this Union would have struck to get its proposal accepted, I am firmly convinced.

Moreover, the attitude survey, informational picketing, and the attempts to publicize the residency issue to the neighborhood groups and the general citizenry, all evidence on this record, show how seriously the Union desires to change the current residency rules contained in the Labor Contract. That fact must be considered in an assessment of what would have been achieved at the bargaining table. The Union was not attempting to get residency for free, I hold.

Thus, the Union, by both its statements and actions, has demonstrated how seriously it takes residency, but Management showed that it takes the issue seriously, too. The difference is this Union by its entire course of conduct demonstrated its willingness to delay receipt of tangible benefits, to trade concessions or benefits, or to give a "quid pro quo." The Employer indeed has been firm in its own desire to maintain the City's boundary residency requirement currently in place. It also says the Union could have "bought a change" if it had offered the City "something equal in value to the community." The Employer however was never willing to name its price, the record clearly establishes, I find.

If the City of Elgin had established there was in fact a true status quo, perhaps under the statutory standards its proposal

would be more reasonable, since the Union would have to present at least a substantial amount of direct evidence to support a "breakthrough" under the Act's basic theory. See my discussion of that requirement in City of Burbank, ISLRB #S-MA-97-56 (1998).

The evidence shows instead a situation where the equities are nearly counterbalanced, except for the clearly established desire of the Union to bargain or trade. For example, several of the Union's arguments seem, to a degree, at least, overblown or exaggerated, I note. For example, there is no proof whatsoever that the residency requirement has created turnover in the Police Department; has caused provable problems with current recruiting; or is likely to result in a significant exodus of qualified officers to other departments in Elgin's labor market. I also agree with the Employer that, under the facts present on this record, the safety concerns of the several Union employees who testified at the arbitration seemed focus either on the dangers inherent in police work or on the special circumstances of volunteers who have chosen to live in high crime areas, for whatever reasons of commitment or a desire to get extra compensation and benefits. No "safe harbor" will necessarily be created if an officer chooses to move to the country or to South Elgin, in my view.

I also agree with Management that this City's housing market provides an ample number of houses that should be afforded to rank and file police. As Management has also emphasized, Elgin's schools range from good to excellent. No special problems of high

property taxes or poor schools have been shown to exist, as has been the case in at least one other interest arbitration decided by me in favor of a union's proposal to loosen a city-boundary residency rule.

Given the lack of proven genuine operational needs; the fact that the Union's offer is precisely the same with regards to geographical limitations as that which the City already lives with as to the grandfathered police officers; the lack of a long history of a specific residency requirement in the City of Elgin; and the clear fact that the Union has done all it can do to resolve the issue through face-to-face bargaining; the Union's final offer on residency is found to be more reasonable than that of this Employer. See City of Burbank, supra, where I stated that the factors the moving party must prove at an interest arbitration are:

1. The old system has not worked as anticipated when originally agreed to;

2. The existing system has created operational hardships for the Employer or equitable or due process problems for the Union; or

3. The City has resisted bargaining table attempts to address the problem.

I accept however the Union's contention that these parties delayed bargaining on the residency issue in their 1997 negotiations because of concerns that the statutory change for residency bargaining occurred mid stream in the course of negotiations for that contract. Fear that going to interest arbitration for the 1996-99 contract would have resulted in the

issue being sent back seems reasonable, given the decisions by other interest arbitrators to that effect that the parties knew of them, as mentioned above.

Therefore, the fact of the 1997 negotiations, and the lack of a change in the contractual provision in the parties' contract for 1996-99 did not create a status quo, as it would have in the normal context of bargaining, I hold. Instead, the first time a status quo for residency truly could be negotiated, where either party could make proposals or demands for a change, and, absent agreement, this Union could force interest arbitration to resolve the impasse, occurred only in the current case, I rule.

Consequently, the whole breakthrough doctrine simply does not apply to the current situation, as I have now held on several occasions under somewhat similar circumstances where residency was at issue under the "new" statutory bargaining rules. That finding is of critical significance to the end result of my reasoning, I rule. All Awards follow.

VIII. SUMMARY OF AWARDS

1. **Wages**. This Arbitrator adopts the City's position on wages.

2. **Permanent Shift Selection**. The Arbitrator holds that the terms and language regarding permanent shift assignment set forth in the 1997-99 collective bargaining agreement between these parties be adopted and included in the current agreement, except for the final paragraph of that provision, which I specifically rule shall be deleted from the current, permanent shift assignment provision adopted under this Award.

3. **Arbitration of Discipline**. The Arbitrator adopts the Union's final proposal and incorporates it in the form submitted into the final collective bargaining agreement.

4. **Residency**. The Interest Arbitrator adopts the Union's position on residency. This offer is, on balance, supported by convincing reasons and is more appropriate than the City's final proposal to maintain its current City-boundary residency rule. Moreover, under these circumstances, I conclude that it would not be proper to attempt to formulate an award different from the proffered last and best offers of the PBPA and this City.

5. By agreement of the parties, all tentative agreements admitted into the record in these proceedings are incorporated herein and made a part of this Interest Arbitration Award as the final dispositions on those agreements between the parties. Included in this Award is the agreed upon retroactivity to January 1, 2000. (Jt. Ex. 2). With respect to random drug testing, the

parties have agreed to negotiate over this issue and, if no agreement has at yet been reached on random drug testing, I retain jurisdiction over this issue as per the parties' stipulations.

ELLIOTT H. GOLDSTEIN
Arbitrator

March 12, 2002